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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 72-1079

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHICAGO FEDERATION OF LABOR AND INDUSTRIAL UNION COUNCIL For Renewal of License for Station WCFL, Chicago, Ill.	File No. BR-3735

MEMORANDUM OPINION AND ORDER

(Adopted November 29, 1972; Released December 8, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING AND ISSUING A STATEMENT.

1. The Commission has before it for consideration: (i) the above-captioned license renewal application for Station WCFL, Chicago, Illinois, filed September 1, 1970, by the Chicago Federation of Labor and Industrial Union Council, hereinafter referred to as the licensee; (ii) a petition to deny the above-captioned license renewal application, filed November 2, 1970, by three Chicago based community organizations, hereinafter referred to as the petitioners; (iii) licensee's opposition to the petition to deny, filed June 1, 1971; and (iv) petitioner's reply pleading, filed August 4, 1971.

Standing

2. Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d)(1), as implemented by Section 1.580(i) of the Commission's rules, 47 C.F.R. 1.580(i), provides that any party in interest may file a petition to deny any application. Where a petition to deny is filed, it must be filed on or before the first day of the last full calendar month preceding the license expiration date of the station involved. The instant petition was filed on November 2, 1970, by the Better Broadcasting Council, Inc., the Task Force for Community Broadcasting, and the Illinois Citizens' Committee for Broadcasting. Each of these organizations is described in the petition as a Chicago based group concerned principally with the rights of the listening public and members of minority groups. The petition is signed by several persons in their individual capacity as residents of Chicago and as agents for the organizations briefly described above. It is clear, therefore, that the petitioners have standing as parties in interest under Section 309(d)(1) of the Communications and Section 1.580(i) of the Commission's rules. *Office of Communication of the United Church of Christ* v. *Federal Communications Commission*, 359 F. 2d 994 (1966).

109-020—72——1

Preliminary Statement

3. Petitioners request that WCFL's license renewal application be designated for hearing on issues designed to explore the licensee's ascertainment efforts, proposed programming, commercial practices, and program logging practices. The petitioners also state that issues should be designated to explore the facts and circumstances surrounding the licensee's dismissal of a WCFL news announcer and whether the licensee negotiated in good faith with petitioners.

4. The licensee, in its opposition, initially contends that the petition does not meet the statutory requirements of Section 309(d)(1) of the Communications Act. Specifically, the licensee claims that the petition does not contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. The licensee also contends that the affidavits attached to the petition are defective because they all contain the following identical language:

> That I have read the foregoing petition and that the allegations of fact contained therein are, to the best of my knowledge, true, except for those items referred to on information and belief, which I believe to be true.

5. Section 309(d)(1) of the Communications Act provides that, where a petition to deny is filed, it must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest. Also, the petition must be supported by affidavit of a person or persons with personal knowledge of the facts contained therein. As will be noted herein, several of the matters raised in this proceeding are unsupported conclusions, assertions on subjective judgment, or allegations based on information and belief. The allegation of ultimate conclusionary facts or mere general allegations based on information and belief, supported by general affidavits, are not sufficient to require an evidentiary hearing. *Stone* v. *FCC*, Case No. 71-1166, D.C. Cir., June 30, 1972. Further, the affidavits in this proceeding are *pro forma* affidavits which, in part attest to certain facts on "information and belief". A valid question is, therefore, raised as to whether such affidavits comply with the statutory standards of Section 309(d)(1) of the Communications Act. Nonetheless, we have decided to consider the petition on its relative merits and issue our ruling accordingly.

Ascertainment—Proposed Programming

6. Petitioners' initial allegation is that the licensee of WCFL has failed to ascertain the needs and interests of the community. Petitioners state that of 257 "community leaders" interviewed by the licensee only one-half of one percent considered themselves representatives of the "racial" community. Petitioners submit that blacks constitute 34.2 percent of Chicago's population and blacks and other minorities constitute 44 percent of Chicago's population. Petitioners conclude, therefore, that the licensee's ascertainment process is not representative of the composition of the community as required by the Commission's proposed *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 20 FCC 2d 880 (December 19, 1969). Petitioners also state

that the licensee's inclusion of 49 students among the "community leaders" interviewed without listing the name, position, and organization of each student is contrary to Question and Answer 21 of the *Proposed Primer, supra.* Petitioners further state that some of the "community leaders" interviewed were not even residents of the Chicago area. Finally, petitioners state that the licensee's "haphazard contacting of a few people it classified as 'man-on-the-street' " is not sufficient to create the required survey of a representative range of the general public.

7. In opposition, the licensee submits that in excess of 38 percent of persons interviewed were members of minority groups. The licensee also submits that in excess of 30 percent of the organizations consulted "have interests primarily designed to benefit members of minority groups" while approximately 60 percent are non-racial. The licensee notes that Commission policy allows the broadcasters to select which leaders should be consulted based on their determination of the composition of the community. In this respect, the licensee states that its selection of leaders was based upon consideration of census data and the *Local Community Fact Book* prepared by the Chicago Community Inventory at the University of Chicago. In response to the allegation that non-residents of the Chicago area were interviewed, the licensee states that, even excluding the non-resident interviewees, there were more than enough persons interviewed for the ascertainment to be valid. Finally, the licensee states that the students interviewed were part of the general public ascertainment and that the requirements contained in the *Proposed Primer, supra*, concerning identification of interviewees applies to community leaders, not to members of the general public.

8. In reply, petitioners state that the licensee's claim that 38 percent of the persons interviewed for community ascertainment were members of minority groups, and that in excess of 30 percent of organizations represented by persons interviewed "have interests primarily designed to benefit members of minority groups," is completely unsubstantiated. Petitioners also state that of the entire list of 257 persons interviewed by the station, only 21 (less than 12 percent) "could possibly be identified as minority leaders." Petitioners dispute the licensee's assertion that it conducted a "random sample" survey of members of the general public, and argue that the station is inconsistent to its own advantage as to whether to classify the 49 student interviewees as part of the community leader survey or part of the general public survey. Petitioners also contend that many of the "interviewees" were not consulted specifically for the purpose of ascertaining the needs of the community. Instead, petitioners submit that some of the interviewees were interviewed during ordinary news coverage or during the course of other programs. Petitioners also maintain that the interviews were not conducted by "top level employees" as required by Question and Answer 11(a) of the *Proposed Primer, supra.*

9. In connection with the above, petitioners also claim that WCFL's application does not satisfy the requirement of Question and Answer 30 of the *Proposed Primer, supra*, which requires applicants to specify what program proposed will meet what community problem. Petitioners claim further that WCFL's application does not satisfy the require-

ments of Question and Answer 33 of the *Proposed Primer*, *supra*, which requires that the applicant's proposed programming be identified "by title, time segment, duration, frequency and description." Petitioners submit that WCFL has only vaguely stated that it will deal with several issues such as pollution and narcotics. Petitioners claim that this makes it impossible for members of the public to ascertain the exact nature of WCFL's proposed programming.

10. In opposition, the licensee states that its renewal application represents that it will broadcast one-hundred and two public affairs documentary programs of 30 to 60 minutes duration dealing with community problems, including educational opportunities, housing, narcotics, air pollution, waste disposal, health and welfare, and youth opportunities. In addition, the application pledged to present public service announcements for a variety of organizations. The licensee asserts that its past performance as reflected in its renewal application is an adequate basis for the station's reliability in implementing its representations. In reply, however, petitioners state that the licensee's statement that it will present 102 documentaries and special programs of 30 to 60 minutes duration during the license period means that the licensee is pledging an average of less than 30 minutes per week of this type of programming, and they argue that this amount (constituting less than one-half of one percent of the station's weekly programming) is clearly inadequate.

11. Part I, Question I of Sections IV–A (Radio) and IV–B (television) of FCC Form 303, the license renewal application, requires applicants to set forth information on the methods used to ascertain community problems and programming matter proposed to deal with the problems ascertained. By action of December 19, 1969, 20 FCC 2d 880, the Commission issued a *Notice of Inquiry and Proposed Primer* dealing with the subject of ascertainment of community problems by broadcast applicants. The *Proposed Primer* was issued to help clarify the requirements of Part I, Question 1 of Sections IV–A and IV–B of the various broadcast application forms, including FCC Form 303. By *Report and Order* adopted February 18, 1971, released February 23, 1971, 27 FCC 2d 650, the Commission issued its final *Primer on Ascertainment of Community Problems by Broadcast Applicants.*

12. In its initial submission under Part I, Question 1 of Section IV–A of WCFL's license renewal application, the licensee described the methods used to ascertain the problems of the public served by the station and the programming matter it intended to broadcast to cover the problems discovered. At the outset the licensee described WCFL's service area and the methods used to determine the composition thereof. The licensee then set forth a list of a large number of community leaders and other persons interviewed. This list included members of the general public and representatives of various governmental, educational, religious, entertainment, agricultural, youth, ethnic, racial, labor, and professional groups and organizations. Each of the community leaders interviewed was identified by name, position and organization. The licensee then set forth an inclusive listing of the problems ascertained and outlined the programming it proposed to broadcast to cover what it deemed to be the most significant problems discovered. The licensee also represented that these programs would be

30 to 60 minutes in length and would relate to various local needs and interests.

13. As previously noted, the license renewal application for WCFL was filed September 1, 1970. Following adoption of the Commission's final *Primer*, *supra*, broadcast applicants were advised that, if necessary, they could amend their survey showings to comply with the new requirements. See *Primer*, *supra*, at p. 680. Accordingly, subsequent to the filing of WCFL's license renewal application the licensee filed two amendments relative to its ascertainment efforts. Both of these amendments were served on the petitioners. 47 C.F.R. 1.522. The first amendment, dated September 15, 1971, consisted of a survey of the general public in the Chicago area and was conducted for the licensee under the direction of Dr. Frank J. Svestka, Jr., an Assistant Professor at the School of Business, Loyola University, Chicago. This survey was based on a total sample of 400 persons. A breakdown of this sample discloses interviews with 82 white males over 30 (20.5%), 90 white females over 30 (22.5%), 45 white males under 30 (11.3%), 44 white females under 30 (11.0%), 36 black males over 30 (9.0%), 25 black females over 30 (7.3%), 29 black males under 30 (7.3%), and 49 black females under 30 (12.3%). Further, a comparison of this sample with 1970 Bureau of Census Population Data shows that the interviews with whites, who represent 65.6% of the population, constituted 65.3% of those surveyed, and that the interviews with blacks, who represent 32.7% of the population, constituted 34.8% of those surveyed. This amendment also set forth the problems ascertained through the general public survey.

14. The second amendment, dated September 17, 1971, consisted of a survey of persons who are primarily black leaders in the Chicago area. Specifically, this survey consisted of interviews with 27 black community leaders and enumerated the problems cited by them as significant and current, namely, (1) unemployment; (2) housing—*i.e.*, lack of decent housing for low, moderate and middle income families; (3) lack of adequate educational opportunity, particularly for minorities; (4) racial problems—*i.e.*, segregation, racial relations and racism; (5) deterioration of the inner city and exodus of industry, talent, capital and people to the suburbs; (6) crime/youth problems; (7) economy—*i.e.*, lack of sources of income to minority group members to establish their own business; and inflation; (8) improved health education, hygiene and facilities; and, (9) inadequate law enforcement.

15. In the foregoing amendments licensee noted that it was in the process of evaluating the findings and would submit an additional amendment upon completion of its evaluation. Accordingly, on November 8, 1971, licensee filed another amendment (also served on petitioners) to WCFL's renewal application wherein it set forth additional typical and illustrative Public Affairs programs it had planned and designed to deal with the problems ascertained through its community surveys. These proposals set forth the titles of the programs, a description of the programs, their scheduled time-segments, duration and intended frequency of broadcast.

16. Petitioners have raised several questions relating to the adequacy of the licensee's initial ascertainment efforts, particularly as they related to the minority community, and its proposed programming. Any

questions about the licensee's initial ascertainment efforts have been corrected by the licensee's amendments of September 15 and 17, 1971, and November 8, 1971. That is, measured against the standards contained in the *Primer*, *supra*, it is clear that the licensee has consulted with a representative cross-section of community leaders, including minority leaders, and a random sample of members of the general public. Further, the interviews with community leaders and members of the general public elicited specific and meaningful information concerning community problems. The community problems mentioned were enumerated by the licensee and the licensee has proposed programming which it deems responsive to its evaluation of such ascertained problems. In short, in view of the number and character of persons interviewed, we are satisfied that the licensee has ascertained the problems of its service area from a representative cross-section of persons in that area; and, further, has proposed sufficient programming to meet the problems discovered. Further, since petitioners' allegations relate to the licensee's unamended showing, and since petitioners have not addressed themselves to the relevance of the licensee's amendments, we conclude that a hearing is not warranted on this aspect of WCFL's license renewal application.

WCFL's Commercial Practices

17. Petitioners' also allege that WCFL has engaged in excessive commercialization. In support of this charge, petitioners note that the licensee states that WCFL conforms to the Code of the National Association of Broadcasters, which provides that radio stations should present no more than 18 minutes of commercial material per hour. Petitioners state, however, that WCFL's renewal application discloses that during the composite week it exceeded 18 minutes of commercial matter per hour four times. Petitioners also note that WCFL's renewal application states that the 18 minute limitation will not be violated "except during political campaigns or extraordinary emergency situations." Petitioners submit that there was no political campaign or emergency situation when the station exceeded its commercial limitation during the composite week. Petitioners also submit that it is particularly significant that the four hours during which the 18 minute limitation was exceeded occurred during "rush hour" traffic time when tens of thousands of people are listening to their car radios. Petitioners also criticize the licensee for increasing the total amount of commercial time from 11% in 1967 to 12.3% in 1970, an increase of 1.3%.

18. In opposition, the licensee notes that its renewal application indicates that it exceeded 18 minutes of commercial material in only four of the 136 hours in the composite week. The licensee also notes that WCFL's renewal application indicated that these statistics were not representative of the station's commercial practices. Rather, the licensee states that these excesses reflected a shortcoming of the station's former traffic system and that the present traffic system makes it impossible for such an inadvertent mistake to occur. Also, the licensee submits that WCFL's increase in commercial time from 11% to 12.3% is well below the industry standard of 30%. The licensee also

submits that petitioners have not challenged other stations in the Chicago market which have commercial continuity in excess of that of WCFL's. In their reply, petitioners state that if the Commission accepts the licensee's excuse then any station can overcommercialize to whatever extent it desires and then point to similar flaws which have allegedly been remedied when questioned by the Commission.

19. In its 1967 renewal application the licensee indicated that its limit on commercial matter would be 18 minutes per hour "except during political campaign or extraordinary emergency situations." The fact that the station exceeded the 18 minute limit four times (by seven seconds, forty seconds, forty seconds and one minute) during the composite week reported in the pending application does not convince us that we or the public have been victims of misrepresentation. The licensee states that the excesses were the product of inadvertence and that the system which allowed such inadvertence has been corrected to eliminate that possibility in the future. Petitioners' argument seems to be that any excess over the station's stated maximum constitutes deceit; we are willing to accept the possibility that human error could produce an occasional excess over the stated maximum and do so in this case.

20. We also note that the Commission has refrained from adopting rules governing the amount of commercial time which may be carried in any 60 minute segment. The Commission has, however, expressed concern with the problem of apparent overcommercialization in broadcast station operation; and, in this respect, has taken steps to advise the industry as to the amount of commercial time the Commission believes to be within an acceptable norm without denying the right of each broadcaster to make his own different judgment on any reasonable basis in terms of his particular situation. Hence, by letter dated February 13, 1970, addressed to Station WXCL, Peoria, Illinois, the Commission, in substance, expressed approval to a commercial policy which provided for a normal commercial ceiling of 18 minutes in each hour with specified exceptions permitting up to 20 minutes in each hour during no more than 10 percent of the station's total weekly hours of operation with a further exception permitting up to 22 minutes where the excess over 20 minutes is purely political advertising. Based on these guidelines, which have become known throughout the industry as the WXCL standards, it is clear that WCFL's commercial overages during only four hours of its total broadcast time are, in fact, *de minimus*. We see no decisional significance in the fact that WCFL's overages occurred during rush hour or drive-time. Petitioners have made no attempt to relate how the licensee's proposed commercial policy of 12.3% is contrary to the public interest or why this policy, which is in fact lower than other stations in the market, can be properly characterized as "overcommercialization".

Program Logging Practices

21. Petitioners also allege that the licensee has misrepresented WCFL's past programming by improperly logging music programs as Public Affairs presentations. In support of this charge, petitioners submit that the licensee has misclassified two programs—namely, *The*

Dick Williamson Show and *The Dick Biondi Show*—as Public Affairs programs even though they consist almost entirely of music. In opposition, the licensee submits that *The Dick Williamson Show* was properly classified as Public Affairs because it involves guest speakers who respond to questions from the public on the air. The licensee also submits that *The Dick Biondi Show*, which involves taped telephone conversations with Vietnam veterans and their relatives, may have been misclassified. In reply, the petitioners reassert their claim that the programs in question are purely entertainment because they are interspersed with musical content. In addition, petitioners claim that the licensee has misclassified other programs as Public Affairs.

22. Based upon our review of the foregoing facts we conclude that there is some merit to petitioners' assertion that *The Dick Biondi Show* may have been misclassified as Public Affairs; *The Dick Williamson Show* was properly classified. However, we are unable to conclude that such misclassification raises a substantial and material question of fact which would require resolution after an evidentiary hearing.

23. Classification of programming presents a difficult and close question. Experience has shown that licensees often have difficulty in differentiating between the various program classifications set forth in the Commission's rules and broadcast application forms. However, absent other evidence, the mere fact that a licensee misclassifies one or two programs does not compel the conclusion that the licensee is guilty of intentional wrongdoing. Here, the misclassification of the contested program as entirely Public Affairs is, in our view, no more than a mistake in judgment, not deception. Further, the contested program has Public Affairs characteristics and, thus, it would have been entirely appropriate for the licensee to prorate the program time between the Public Affairs and some other program category. There is no evidence which would support a conclusion of deliberate misrepresentation; nor is there any evidence which would establish a pattern of such misclassification. Conversely, an examination of WCFL's license renewal application discloses a considerable number of other programs properly classified as Public Affairs programs which have served many diverse needs and interests within the station's service area. Against this backdrop, we conclude that there is no need to explore the licensee's program logging practices in an evidentiary hearing.

Other Programming Matters

24. Petitioners also contend that the licensee's reduction of WCFL's News programming by five hours per week is unjustified, particularly during a period of national turmoil. In opposition, the licensee submits that WCFL still proposes 15 hours of News programming per week, or 9.2% of the station's total program schedule. The licensee also submits that, although petitioners have expressed their opinions and views, they have failed to submit any facts showing that the proposed percentage reduction constitutes a *prima facie* basis for an evidentiary hearing. On the other hand, in reply, petitioners submit that the licensee has failed to offer any justification for its proposed reduction in WCFL's News programming.

25. A licensee has the responsibility of making good-faith, reasonable judgments as to what programming will serve the needs and interests of his service area and the amounts, kinds and time-periods during which such programming should be broadcast. Petitioners make no attempt to relate how the licensee's proposed reduction in News programming from 20 to 15 hours per week will fail to serve the public interest. The bare allegation that such a reduction is unjustified does not establish a substantial and material question of fact warranting exploration in an evidentiary hearing.

Requested Character Issues

26. Petitioners contend that the character qualifications of the licensee should be placed in issue on the grounds that articles published in the *Hyde Park Kenwood Voices* and the *Chicago Journalism Review* charge that a WCFL news reporter was discharged by the station because the Mayor of Chicago was displeased by his reports. This charge, however, is based on information and belief. As previously noted, Section 309(d)(1) of the Communications Act places a burden on petitioners to come forward with specific facts by which the Commission can reasonably conclude that the act alleged did, in fact, occur. General newspaper articles do not satisfy this standard of proof. Moreover, petitioners admit that they cannot swear to the veracity of this charge.

27. Petitioners also contend that the licensee's character qualifications should be placed in issue because the licensee has exhibited bad faith with the public it is licensed to serve. Petitioners claim that licensee's station manager was surly and uncooperative with their representatives and, in this respect, refused to discuss their proposals for improving the station's service. In opposition, the licensee submits that station representatives met with petitioners and that the petitioners were not entirely blameless in their negative encounter with WCFL's station manager. In reply, petitioners reassert their claim that the licensee was unwilling to review their written suggestions and otherwise used dilatory tactics in attempting to discourage review of the station's public file.

28. The Commission has consistently encouraged broadcasters and community groups to meet in an attempt to resolve their differences. Here it appears that the licensee and petitioners did hold meetings and that the petitioners had the opportunity to examine WCFL's public file. It also appears that the licensee has considered and adopted several of the suggestions advanced by the petitioners. Under these circumstances therefore we do not believe that a full evidentiary hearing is warranted merely to explore the reasons underlying the licensee's refusal or reluctance to implement all of the petitioners' suggestions. "How a licensee responds to what may be conflicting and competing needs of regional or minority groups remains largely within its discretion. It may not flatly ignore a strongly expressed need; on the other hand, there is no requirement that a station devote twenty percent of its broadcast time to meet the need expressed by twenty percent of its viewing [or listening] public." *Stone* v. *F.C.C.*, *supra*. Further, while under an obligation to ascertain and program for community

needs (*i.e.*, problems), no broadcaster can be aware of everyone's problems all of the time. Thus, interested citizens who feel that a station's performance is inadequate should so advise the broadcaster to provide him with an opportunity to consider their ideas and suggestions. Such discussions will, obviously, be more meaningful and effective if conducted *throughout the license term.* Such was not the case herein. Instead, the record indicates that the discussions between the licensee and petitioners were conducted just prior to renewal time and in the face of a license renewal challenge. Experience has shown that fruitful discussions are difficult to achieve under such circumstances. We wish to reaffirm our prior expression of policy therefore that community-broadcaster discussions be conducted throughout the license term as the best and most effective method of improving local service and resolving local complaints.

CONCLUSIONS

29. In view of the foregoing, we find that petitioners have failed to raise any substantial and material questions of fact which would warrant exploration in an evidentiary hearing. We further find, upon our consideration of the above-captioned license renewal application for Station WCFL and other documents cited herein, that the Chicago Federation of Labor and Industrial Union Council is qualified to be a licensee, and that a grant of the application would serve the public interest, convenience and necessity.

30. Therefore, IT IS ORDERED, That the petition to deny filed by the Better Broadcasting Council, Inc., the Task Force for Community Broadcasting, and the Illinois Citizens' Committee for Broadcasting IS DENIED.

31. IT IS FURTHER ORDERED, That the above-captioned license renewal application for Station WCFL, Chicago, Illinois IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

In the face of some very serious allegations, the majority today renews the license for WCFL, Chicago, Illinois, and dismisses a petition to deny that license filed by the Better Broadcasting Council, Inc., the Taskforce for Community Broadcasting, and the Illinois Citizen's Committee for Broadcasting. The majority's cavalier treatment of petitioners' claims in this case—like its casual approach to similar petitions in prior cases—raises substantial questions about this Commission's desire to ensure that its licensees operate in the public interest. I dissent.

Petitioners raise several searching questions regarding the licensee's ability to serve its community of listeners. Among other charges, petitioners claim that WCFL has engaged in overcommercialization, that the licensee misrepresented WCFL's past programming by improperly logging music programs as Public Affairs presentations, that the licensee engaged in insidious censorship by dismissing one of the sta-

tion's announcers for political reasons, and that the licensee exhibited bad faith by failing to negotiate with petitioners.

As to the petitioners first claim, it is undisputed that WCFL exceeded 18 minutes per hour of commercial material four times during its composite week. It is also undisputed that WCFL adheres to the NAB Code which provides that radio stations should not exceed this 18 minute limit. Nor is it disputed that in its 1967 renewal application, WCFL promised not to exceed the Code's 18 minute limitation.

It would seem to follow, therefore, that WCFL's licensee lied to this Commission when it promised to abide by the NAB Code's commercialization provisions. Misrepresentation, of course, is a serious problem, so the majority tries to wriggle out from under the implication of these clear facts.

First, the majority notes that WCFL exceeded its commercial limit in only four of the 136 hours of its composite week. It happens, however, that each of these four instances—one of which amounted to a minute of overcommercialization—occurred during "rush hour" traffic, time when most people are listening to their car radios. The majority, however, places no significance on this fact; it suggests, instead, that four violations of a licensee's promised commercialization time constitute a *de minimus* situation. Is this the case, regardless of the fact that all the violations occur during prime radio time? Further, how many violations are necessary before the protection of the majority's "*de minimus*" rubric no longer attaches? The majority doesn't say, because it doesn't know.

Second, the majority—without any inquiry whatsoever—accepts the licensee's unsupported contention that its overcommercialization was the product of inadvertence. This may, indeed, have been the case. In such event, however, one would be entitled to ponder why such inadvertence only took place during the prime "rush hour" time. In any event, the question whether the station's overcommercialization was, indeed, the product of inadvertence is one of fact; it is also unresolved, and cannot be determined in the absence of a hearing.

The majority, however, notes that it is "willing to accept the possibility that human error could produce an occasional excess over the stated maximum and [it does] so in this case." Why is the majority so eager to accept the licensee's unsupported explanation in the absence of an inquiry? The answer can only be that the majority does not want to know the truth, for that truth could well cast doubt upon this licensee's ability to serve the public interest. That could, in turn require that we deny this license renewal, and it is well established that this Commission is loath to do that.

Petitioners also contend that the licensee misrepresented its past programming by classifying two entertainment music programs as public affairs programming. The licensee concedes that one of these programs may have been misclassified. The majority, again not eager to disagree with the licensee, also finds that there is merit to the concession that this show was misclassified. Yet, in the face of such a finding, the majority concludes that such misclassification does not warrant a hearing to determine whether or not the error was deliberate.

Instead, the majority is content to note that program classification is a difficult task. It adds:

> [a]bsent other evidence, the mere fact that a licensee misclassifies one or two programs does not compel the conclusion that the licensee is guilty of intentional wrongdoing.

This, of course, is true—misclassification, without a hearing, does not require us to find that the misclassification was intentional. But the obvious point is that there must be a hearing on the issue of intent. The majority relies on the statement quoted above to justify its refusal to designate this issue for a hearing. That sort of logic is simply absurd.

Petitioners claim this admitted misclassification was an intentional misrepresentation. The licensee argues that it merely made an unintentional error in judgment. Once again, the majority accepts the licensee's side of the story without any attempt to discover the truth.

Petitioners also contend that WCFL's licensee discharged a WCFL news reporter because the mayor of Chicago was displeased with that announcer's over-the-air reports. If true, such a fact would cast considerable doubt upon the licensee's ability to serve the public interest by reporting the news fairly and objectively.

The majority, however, again finds that petitioners' allegations do not warrant a hearing. These charges are supported by articles from two newspapers. The majority notes that under § 309(d)(1) of the Communications Act the truth of a petitioner's charge must be established before a hearing will be designated on that issue. The majority then concludes, without reference to any authority, that petitioners' newspaper articles do not satisfy that standard of proof.

Section 309(d)(1) of the Act does, indeed, require that petitions to deny be accompanied by an affidavit of a person or persons with personal knowledge of the facts alleged. The majority suggests, however, that this section demands, in effect, that the allegations in a petition to deny be supported by the sort of factual showings that can only be determined through an evidentiary hearing. That sort of reasoning, of course, places the cart before the horse. If, prior to hearing, these petitioners must establish the truth of their claim that the licensee dismissed an employee for politically insidious reasons, then no hearing would be needed. Given these facts we would need only make the policy decision that the licensee was in violation of the publics' interest in objective news reporting.

Petitioners have charged that an announcer was dismissed. That is not denied. They charge also that he was dismissed for political reasons, and that charge finds support in various news reports. In my opinion, such a charge is both serious and incapable of concrete proof prior to a hearing. By refusing to designate this issue for hearing—and by failing to advise these petitioners of just what sort of added information is necessary before a hearing will be required—the majority has, in effect, decided that nobody can ever win a hearing on a claim that a licensee has censored its news reporting for unlawful purposes.

Finally, petitioners contend that the licensee exhibited bad faith with respect to the public it is licensed to serve by refusing to discuss petitioners' proposals for improving the station's service and by using dilatory tactics in attempting to discourage review of the station's public file.

The licensee's alleged attempts to prevent petitioners from examining its public file apparently failed, so the majority refuses to inquire into the means by which the licensee allegedly attempted to discourage citizen review. The majority also rationalizes its refusal to inquire into the validity of petitioners' charges on the grounds that a meeting between petitioners and the licensee was, in fact, held. But petitioners do not deny the existence of such a meeting. They contend, rather, that the meeting was useless due to the licensee's allegedly stubborn refusal to discuss anything of substance.

The lesson of the majority's analysis as to this issue is that a licensee who meets with community groups may be as surly and intransigent as he likes—so long as the meeting is held.

The sort of bureaucratic irresponsibility reflected by today's decision is—even to one who has seen a lot of irresponsibility on the part of this agency during the past six and a half years—truly incredible. Petitioners only possible relief at this juncture is from the courts.

I dissent.

F.C.C. 72-1098

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 15 OF THE COMMISSION'S RULES TO REGULATE THE OPERATION OF A CLASS I TV DEVICE—A NEW RESTRICTED RADIATION DEVICE WHICH PRODUCES AN RF CARRIER MODULATED BY A TV SIGNAL, AND AMENDMENT OF PART 1 TO PROVIDE A FEE SCHEDULE FOR TYPE APPROVAL OF SUCH DEVICES	Docket No. 19281 RM-1610

REPORT AND ORDER

(Adopted December 6, 1972; Released December 11, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. This proceeding was initiated in response to a petition [1] for Rule Making filed by Motorola, Inc., to amend Part 15 of the rules to permit the use of certain video playback devices referred to by the Commission as Class I TV devices. A Notice of Proposed Rule Making [2] was adopted July 14, 1971, by the Commission setting forth proposed regulations governing the operation of these devices. The Second Notice of Proposed Rule Making [3] in this proceeding relaxed the field strength requirements for electromagnetic radiation from the cabinet, control circuits and power leads of these devices. Subsequent orders were adopted which denied in one instance [4] and granted in three instances [5] an extension of time in which to file comments.

2. In the Notice of Proposed Rule Making a Class I TV device was defined as:

> *Class I TV Device.* **A type of restricted radiation device that produces a radio frequency carrier modulated by a television signal.**
>
> **NOTE: Class I TV Devices may include, but are not limited to: video recorders, and cameras, character generators, TV modulators.**

Many of the comments received expressed concern about the specific equipments which would be included as Class I TV devices. Moreover, these comments made it evident that the above definition was not clear. Accordingly, the definition has been revised to read:

> *Class I TV Device.* **A restricted radiation device that produces, on frequencies allocated for television broadcasting, a radio frequency carrier modulated by a**

[1] RM-1610 filed April 27, 1970.
[2] Docket No. 19281, Notice of Proposed Rule Making, adopted July 14, 1971 (36 F.R. 13793).
[3] Docket 19281, Second Notice of Proposed Rule Making, adopted September 8, 1971 (36 F.R. 18656).
[4] Docket 19281, Order adopted December 15, 1971.
[5] Docket 19281, Order adopted August 26, 1971 (36 F.R. 17589). Docket 19281, Order adopted November 30, 1971 (32 FCC 2d 606). Docket 19281, Order adopted December 28, 1971 (37 F.R. 146).

video signal and which feeds the modulated radio frequency energy to the associated television receiver by conduction.

NOTE: Class I TV devices may include, but are not limited to certain video recorders, television cameras, TV game devices and certain modulators intended for use with video devices; they do not include equipment used within a cable television system nor equipment producing signals on other than television broadcasting frequencies.

The following discussion is intended to make clear what devices are encompassed in this definition and which are excluded.

3. Three features distinguish the Class I TV device from other restricted radiation devices. The Class I TV device generates a modulated RF signal carrying video with or without audio information and is similar to the signal transmitted by a television broadcast station. In the Class I TV device, this signal is transmitted over a wire or cable. It should not be transmitted by radiation through space. Finally, the signal is intended to be received by a conventional television receiver. To fall into the category of a Class I TV device, the equipment must meet all of the above criteria—type of signal generated, the method of transmission and connection to a conventional TV receiver. Thus, a television camera in a closed circuit TV system which provides video (and aural) information at video base band frequencies or at frequencies other than these allocated for television broadcasting is not a Class I TV device. Similarly, a video tape player which provides information (at video frequencies) directly to the video and audio amplifiers of a conventional television receiver is not a Class I TV device. Both of these equipments are restricted radiation devices subject to the technical specifications in Section 15.7 of Part 15 (47 C.F.R. 15.7).[6]

4. A modularized approach to construction of Class I TV devices was described in comments received from Matsushita Electric Corporation of America and questions were raised concerning which modules require an equipment authorization from the Commission. The amount of shielding provided by the cabinet in which a Class I TV device is housed, the interaction between modules and the method of interconnection of modules such as tuners, video recorders, playback mechanisms, carrier generating circuitry and modulators determines the level of conducted and radiated spurious signals emanating from the device. It is accordingly not possible to lay down any general rules as to which arrangement of modules is subject to the rules adopted herein. In general, each arrangement of modules will have to be treated as an individual Class I TV device. If there is a question as to the applicability of these rules to a particular arrangement of modules, the manufacturer should consult our Chief Engineer.

5. In response to another comment, the Commission points out that a Class I TV device which includes a means for receiving standard TV broadcast channels must be capable of receiving all such channels allocated by the Commission to the television broadcast service. Such a tuner must be certificated as a television receiver pursuant to Part 15 and spurious signals radiated from such tuner must comply with the radiation limits set out in Subpart C of Part 15 of our Rules.

[6] In a separate rule making to be instituted shortly, the Commission will revise Section 15.7 to clarify its applicability to the mentioned equipments.

The Dell-Star Filing

6. The Dell-Star Corporation submitted a petition requesting the Commission to issue a Third Notice of Proposed Rule Making in this proceeding to permit the marketing and operation of a wireless surveillance camera. The Dell-Star wireless camera has affixed to it a miniature transmitter and an antenna. The unit is designed to operate in the frequency range 470–890 MHz, and would provide a field strength of 500 microvolts per meter at a distance of 100 feet. This proceeding deals with devices that transmit to a conventional television receiver by means of a direct wire connection—not by radiation. We consider Dell-Star's request to be outside the scope of this proceeding. Accordingly, as indicated in our Order adopted November 30, 1971,[7] Dell-Star's petition has been removed from this proceeding and is being treated as a separate petition for rule making.[8]

Discussion of Comments

7. Comments from twenty-five parties have been filed in this proceeding. Seventeen of these comments were submitted by manufacturers, ten of whom either presently manufacture or intend to manufacture a Class I TV device. Six comments were provided by various groups from four manufacturing and trade associations. One comment was submitted by the Office of Telecommunication Policy and one by a law firm.

8. Four areas in the proposed rules engendered the greatest number of comments. Therefore, we will focus our discussion primarily on these matters which are delineated below:

a. The scope of the proposed rules.
b. The output signal level of the RF carrier.
c. The requirement for an antenna transfer switch to be part of a Class I TV device.
d. The type of equipment authorization to be required by the Commission for these devices.

9. A number of comments expressed concern about the scope of the rules proposed in this proceeding since they could be interpreted to apply to other than video modulated RF devices designed to operate into a standard receiver. We agree with the comments received and have modified the definition of Class I TV devices to indicate more clearly that the rules in the instant proceeding are intended to apply to video devices designed to operate with a standard television receiver. The expanded definition specifies that Class I TV devices shall operate on standard television channels and connect directly to the television receiver using cable or wire; community antenna systems (CATV) are excluded. As previously stated, the Commission will institute action to modify Section 15.7 of our Rules and further clarify the equipment which will be subject to that section.

10. More than half of the Class I TV device manufacturers submitting comments requested that the Commission consider a RF output

[7] Footnote 5 supra.
[8] This petition has been assigned the number RM–2071.

voltage greater than the limit (115.6 R)[9] set out in the proposed rules. The comments received in some cases differentiated between the RF output signal levels required for proper television receiver operation on VHF and UHF channels. The respondents and the signal levels they recommend are listed in the following table:

Respondents	VHF (microvolts across 300 ohms)	UHF (microvolts across 300 ohms)
Warwick Electronics, Inc	5,000	8,000
Motorola, Inc	8,000	(1)
Zenith Radio Corp	2,800	5,600
EIA, Consumer Electronics Group	5,000	8,000
Sony Corporation of America	5,600	(1)
EIA of Japan	20,000	(1)
RCA Corp	2,200	(1)
Cartridge Television, Inc	9,500	15,000

[1] Signal level for UHF not specified.

The salient factors cited in the comments to support these requests for high power included the following:

(a) The output level specified in the Notice of Proposed Rule Making is just adequate to provide what would be termed an "excellent" picture by Television Allocations Study Organization (TASO), when operating into a VHF front end having a typical noise figure of 7 dB. This signal level at the input to the television receiver makes no allowance for degradation in performance of the Class I TV device or television receiver if an "excellent" picture is to be maintained.

(b) A large number of video playback devices currently in use exhibit a signal to noise ratio less than the 44 dB determined by TASO as necessary to provide an "excellent" picture. The noise generated by video playback devices are comparable in level to the thermal noise generated by the front end of the television receiver. Since the noise from the playback device and the thermal noise are additive, the value of noise density in the video baseband of the television receiver could be increased by as much as 3 dB. The resultant decrease in video signal to noise ratio is such that a picture of less than "excellent" quality would be obtained at the television receiver.

(c) The AGC circuits in some television receivers will be activated with input signals in the range of 1000–3000 microvolts. Operation of the television receiver with the AGC activated may increase the noise figure of the equipment due to a change in the gain and operating point of the active devices which provide the required amplification of the incoming signal. Therefore, the comments received requested that the output level be increased to compensate for this increase in noise power.

(d) Current manufacturing processes require a tolerance on the output signal level; the value of this production tolerance may be as high as ±3 dB.

11. We have carefully considered the comments received in this matter and we concur that a higher output signal level should be permitted, notwithstanding the apparent increase in the potential for interference which may accrue as a result of this change.

12. Seven of the comments received recommended that the incorporation of a switch by the manufacturer as part of the Class I TV device should be made mandatory. The Commission stated in the text of the Notice of Proposed Rule Making that several manufacturers planned to provide a switch as part of the device for switching the home television receiver between the antenna and the Class I TV device. However, we did not indicate the amount of isolation which

[9] R is equal to a resistance (ohms) matching the rated output impedance of the device.

should be provided by the switch nor did we state that we would expect the manufacturers to use this switch in all devices marketed. The respondents who requested that the switch be made mandatory and the amount of isolation which they recommended are listed below:

Respondent:	*Isolation (dB)*
EIA, Communications and Industrial Electronics Division	40.
Warwick Electronics, Inc	40.
Motorola, Inc	40.
EIA Consumer Electronics Group	40.
National Cable Television Association	40.
RCA Corp	60.
Association of Maximum Service Telecasters, Inc	Not specified.

13. We have considered the comments received concerning this matter and agree that such a switch should be required as part of a Class I TV device. A mandatory switch requirement will minimize the possibility of connecting the Class I TV device cable directly to the antenna attached to the receiver and reduces significantly the possibility for cochannel interference. We are permitting a RF output signal 10 dB higher than set forth in the Notice of Proposed Rule Making in this proceeding and, therefore, require a switch attenuation greater than the industry consensus to reduce the possibility of cochannel interference. The Commission recognizes that the probability for interference is lessened by the directional properties of typical TV antennas and, consequently, considers that a switch attenuation which provides a radius of interference of approximately 20 feet in a field comparable to the low band VHF Grade B contour is adequate. Beyond the Grade B contour, in areas of lower field strength, the interference problems are expected to be small and of such a nature as to be readily soluable by a proper choice of operating frequency for the Class I TV device. To maintain this zone of interference discussed above the Commission is adopting a transfer switch attenuation of 60 dB.

14. We have received nine comments objecting to and one comment supporting our proposal to require type approval for a Class I TV device. The comments opposing type approval recommended that a certification program, similar to that applicable to television receivers, be used to obtain the necessary equipment authorization required by the Commission to permit devices to be legally marketed. The comments further stated that many manufacturers have performed tests on television receivers which are acceptable to the Commission for purposes of certification thereby demonstrating that these firms have the necessary measurement capability. We concur that most television manufacturers have this capability. However, we are very much concerned about the numerous smaller companies which will produce these devices and which can be expected not to be so well equipped. In view of the high interference potential of these devices, this is a risk we refuse to accept. The comments further state that the time period necessary to complete the requirements for type approval would cause excessive delays in obtaining equipment authorizations, finalizing production schedules, and incorporating design changes in production units, especially during period of model change. The Commission recognizes that type approval does require a longer period of time than

certification. However, we feel that the problem of delays is for the most part soluble by application of established production scheduling methods and the careful examination and testing of equipments prior to the submission to the Commission for type approval testing. When we weigh the magnitude of the interference which the television viewing public may be subjected to from equipments which do not comply with the rules adopted in this proceeding, to the increased difficulty imposed on the manufacturer by the type approval program, the former consideration must, of necessity, be controlling. Accordingly, the Commission is not persuaded to change the proposed type approval program to one which affords the public less protection from harmful interference. The rules adopted herein, therefore, require type approval for Class I TV devices.

15. We are specifying certain measurement instrument characteristics to minimize the difference in test results obtained at the applicant's test facility, prior to submitting the device to the Commission, and the measurements obtained by our Laboratory Division when the Class I TV device is tested to determine compliance with our Rules. The field strength measuring instrument shall be capable of responding to the peak values of field strength and have a bandwidth of at least 150 kHz. The type of antenna to be used and the polarization are also specified for the various frequency ranges over which Class I TV devices are evaluated.

16. The proposed radiation interference limits of 15 microvolts per meter at 1 meter or $\lambda/2\pi$, whichever is greater, will provide approximately 40 dB of cochannel interference protection to adjacent receiver located at a distance of 20 feet from the Class I TV device. This assumes the adjacent receiver is situated in a field comparable to the low band VHF Grade B contour (47 dB above a microvolt per meter). We are aware that at levels below 47 dB above a microvolt per meter the potential for this type of interference increases; however, these problems are most likely to occur in sparsely populated areas where the majority of homes are separated by more than 20 feet and interference problems can be readily identified and corrected. No comments were received opposing this field strength limit as set forth in the Second Notice of Proposed Rule Making and, consequently, we are adopting these limits without modification.

17. Pursuant to our policy to impose filing and grant fees for equipment authorizations, Section 1.1120 of Part 1 is amended to set out a fee schedule for the type approval of Class I TV devices. As pointed out above, if the Class I TV device includes a television tuner, the tuner must be separately certificated and the fees for certification thereof must be paid separately.

Extension of Waivers

18. Several manufacturers listed below desirous of marketing Class I TV devices prior to the adoption of the rules proposed in this proceeding submitted certain models of their equipment to the Commission for test purposes.

The Magnavox Corporation
Motorola Corporation
Sony Corporation of America, Inc.
Matsushita Corporation of America, Inc.
Warwick Electronics, Inc.

After testing at our laboratories established that these equipments complied with the proposed technical standards for a Class I TV device, the Commission granted waivers of Section 15.7 and Section 2.805 to permit immediate marketing of the equipments. These waivers all terminate on the date final rules are adopted in this proceeding. Since the rules adopted herein require type approval as a prerequisite for the marketing of Class I TV devices, and to allow time for the manufacturers to procure type approval from the Commission, the said waivers are hereby extended to expire on March 1, 1973. Manufacturers are urged to submit their equipment for type approval as soon as possible. The Commission, on its part, undertakes to expedite action of these applications.

19. Authority for the amendments set forth in the attached appendix to the Commission Rules is contained in Sections 4(i), 302, 303(c), (g) and (r) of the Communications Act of 1934, as amended.

20. IT IS ORDERED, effective January 19, 1973, that Part 1 and Part 15 of the Rules are amended as set forth in the Appendix attached hereto. IT IS FURTHER ORDERED that the petition and comment filed by Dell-Star Corporation be treated as a separate petition for rule making. IT IS FURTHER ORDERED that waivers for Class I TV devices heretofore granted are extended to expire on March 1, 1973. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Parts 1 and 15 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 1.1120 under Type Approval, a new item 1(c)(3) is added to read as follows:

§ 1.1120 *Schedule of fees for equipment type approval, type acceptance, and certification.*

* * * * * * *

Type Approval [1] [2]

Item	Filing fee	Grant fee
1. * * *	* * *	* * *
(c) * * *	* * *	* * *
(3) Class I TV device	$50.00	$250.00
* * * * * * *		

2. In § 15.4, paragraph (m) is added to read as follows:

§ 15.4 *General definitions.*

* * * * * * *

(m) *Class I TV Device.* A restricted radiation device that produces, on frequencies allocated for television broadcasting, a radio frequency carrier modulated by a video signal and which feeds the modulated radio frequency energy to the associated television receiver by conduction.

NOTE: Class I TV devices may include, but are not limited to certain video recorders, television cameras, TV game devices and certain modulators intended for use with video devices; they do not include equipment used

within a cable television system nor equipment producing signals on other than television broadcasting frequencies.

* * * * * * *

3. § 15.7 is amended by changing the appended note to read as follows:

§ 15.7 *General requirement for restricted radiation devices.*

* * * * * * *

NOTE: Radio receivers, cable television systems, Class I TV devices and low power communications devices are regulated elsewhere in this Chapter and are not regulated by this section.

4. A new Subpart H is added to Part 15, to read as follows:

TABLE OF CONTENTS, SUBPART H—CLASS I TV DEVICES

Sec.
15.401 Conditions of operation.
15.403 Output signal level.
15.405 Output terminals.
15.407 Transfer switch and isolation requirement.
15.409 Output terminal conducted interference limits.
15.411 Type approval.
15.413 Certification.
15.415 Identification of a Class I TV device.
15.417 Measurement of field strength.
15.419 Radiation interference limits.
15.421 Line-conducted interference limits.
15.423 Interference from a Class I TV device.

SUBPART H—CLASS I TV DEVICES

§ 15.401 *Conditions of operation.*

(a) A Class I TV device shall operate within a channel allocated for television broadcasting providing its operation at all times complies with the requirements of this Subpart.

(b) A Class I TV device shall transmit its output signal to a receiving device by means of a direct connection (either wires or coaxial cable) provided by the manufacturer.

§ 15.403 *Output signal level.*

The voltage corresponding to the peak envelope power of the video modulated signal during maximum amplitude peaks across a resistance (R ohms) matching the rated output impedance of the device, shall not exceed $346.4\sqrt{R}$ microvolts. The peak envelope power of the sound modulated signal shall be at least 13 dB below that of the video modulated signal.

NOTE: If R=300 ohms, the maximum RMS output voltage of the video carrier is 6000 microvolts.

If R=75 ohms, the maximum RMS output voltage of the video carrier is 3000 microvolts.

§ 15.405 *Output terminals.*

A Class I TV device which provides a desired output on two or more television channels simultaneously shall be provided with separate terminals for each channel output.

§ 15.407 *Transfer switch and isolation requirement.*

Each Class I TV device shall be equipped with a receiver transfer switch for connecting the antenna terminals of the receiver selectively either to the receiving antenna or to the radio frequency output of the Class I TV device. In either of its positions, the receiver transfer switch shall provide at least 60 dB isolation between the Class I TV device and the receiving antenna on any TV channel on which the Class I TV device can be operated.

§ 15.409 *Output terminal conducted interference limits.*

At any RF output terminal, the peak envelope power of any emission appearing on frequencies removed by more than 3 MHz from either edge of the standard

TV channel on which the device is operated shall be attenuated below the peak envelope power of the visual signal by no less than 30 decibels, measured with a matched termination.

§ 15.411 *Type approval.*

(a) A Class I TV device shall be type approved pursuant to the procedures set out in Subpart F of Part 2 of this Chapter.

(b) The application for type approval shall be submitted on Form 729 and shall include the following attachments.

(1) A statement detailing the technical specifications of the device.

(2) Two copies each of a circuit diagram and instruction manual.

(c) To receive type approval, a Class I TV device must meet the following requirements:

(1) The device must comply with the requirements of this Subpart.

(2) The design and construction of the equipment must give reasonable assurance of compliance with the requirements of this Subpart for at least 5 years under normal operation and with average maintenance.

(3) The device must be so constructed that the adjustment of any control accessible to the user will not cause operation in violation of the requirements of this Subpart.

§ 15.413 *Certification.*

If the device includes a tuner as part of its design, the Class I TV device must also be certificated pursuant to procedures set out in Subpart C of this Part.

§ 15.415 *Identification of a Class I TV device.*

The Commission will assign a type approval number to each Class I TV device which has been type approved. The type approval number and the following statement shall be permanently inscribed upon or permanently attached to the exterior of each production unit as follows:

FCC Type Approval No. ----------. Valid only when operated pursuant to FCC Rules, Part 15.

§ 15.417 *Measurement of field strength.*

Field strength of video modulated signals shall be measured with instruments responding to the peak value, and the bandwidth of any instrument used for such measurements above 50 MHz shall be at least 150 kHz. An electrostatically shielded loop antenna lying in a vertical plane shall be used for measurements on frequencies below 18 MHz and a dipole antenna for measurements on frequencies above 30 MHz, in both polarizations. Either a loop or a dipole antenna may be used on frequencies between 18 and 30 MHz.

§ 15.419 *Radiation interference limits.*

The field strength of any electromagnetic energy radiated from the cabinet, control circuits and power leads of a Class I TV device (having its output terminated by a resistance equal to the rated output impedance) shall not exceed the field strength of 15 microvolts per meter at a distance of $\lambda/2\pi$ or at a distance of 1 meter, whichever is the larger distance. (The distance $\lambda/2\pi$ in feet is equal to 157 divided by the frequency in MHz.)

§ 15.421 *Line-conducted interference limits.*

The RF voltage measured between each power line and ground at the power terminals of the device shall not exceed 100 microvolts at any frequency between 450 kHz and 25 MHz, inclusive when measured in accordance with IEEE Standard 213.

§ 15.423 *Interference from a Class I TV device.*

(a) Operation of a Class I TV device is subject to the general conditions of operation set forth in Section 15.3.

(b) The operator of a Class I TV device who is advised by the Commission that his device is causing harmful interference shall promptly stop operating the device and shall not resume its operation until the condition causing the harmful interference has been eliminated.

F.C.C. 72-1072

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
CONSTRANDER CORP., EAST LIVERPOOL, OHIO
For Partial Refund of Grant Fee } BTC-6650

CONSTRANDER CORP. NOVEMBER 29, 1972.
Box 90,
East Liverpool, Ohio 43920.

GENTLEMEN: This refers to your letter of November 29, 1971, in which you request a partial refund of the grant fee of $5,810.00 paid in connection with the transfer of control application (BTC-6650) whereby the control of Constrander Corporation, licensee of Stations WOHI(AM) and WRTS(FM), East Liverpool, Ohio, was transferred from Joseph D. Coons to Frank J. Mangano.

Your claim of refund in the amount of $2,280.64 is based on three separate transactions involving the licensee corporation prior to or simultaneous with the signing of the contracts that were the basis of the transfer application. The first transaction involved the forfeiture of $21,072.56 that was paid by a former buyer who did not consummate the previous transfer. You claim that this amount was placed in the accounts of the licensee corporation by Mr. Coons, the transferor, and that Mr. Mangano, the transferee in this purchase and sale that was consummated paid dollar for dollar for the forfeited amount. You claim that this amount should be excluded from the consideration because Mr. Coons, the transferor could have rightly removed it from the corporation and the purchase price would have been reduced by $21,072.56.

The second transaction that you claim took place on the contract signing date was the transfer of $12,730.03 by Mr. Coons to the corporation in order to reduce the accounts payable of the corporation. You claim the purchase price should be reduced by that amount because, in your claim, it is stated: "Obviously, the transferee paid dollar for dollar for this accounts payable reduction."

The third transaction that is claimed to have occurred on the contract signing date was an advance of funds to the corporation by the transferee of $60,000.00. You claim that this should be regarded as a loan to the corporation, and that this advance of funds should be excluded from the purchase price because those funds could have been advanced to the corporation on any date after the contract was signed. Another loan of $90,000 involving the corporation was made sometime near the contract date, but is not a part of your refund request.

The contract between Mr. Coons and Mr. Mangano was signed on May 27, 1971 and provided for the purchase of 510 of the 988 outstanding shares for $34,763.00. The transfer of control application was

granted October 20, 1971. A part of the basic contract was an employment contract between the licensee corporation and the transferor of even date that provided for the total payment of $75,000 to Mr. Coons in installments over a period of years.

On May 27, 1971, the date of the signing of the contract, Mr. Mangano immediately purchased the minority interest of 478 shares not covered by the basic contract of the 988 outstanding shares for $30,730.00. Upon consummation of the transfer, Mr. Mangano would then be the owner of 100% of the stock of the licensee corporation.

What was involved in the purchase and sale was the transfer of 100% of the stock in a corporation from Mr. Coons to Mr. Mangano. The first transaction concerning the forfeited payment paid in connection with a previous transfer that was not consummated occurred sometime prior to the signing of the subject contract between Mr. Coons and Mr. Mangano and was an internal corporate matter that was not relevant to the Commission's consideration of the assignment that was granted by the Commission on October 20, 1971. Also not relevant to the Commission's consideration was the alleged reduction of accounts payable by the transferor on the same day that the contract was signed. It, also, was simply an internal corporate transaction. Therefore, no reduction in grant fee is warranted as to the first two transactions.

That portion of the refund request based on the $60,000 advance to the corporation by Mr. Mangano that was claimed to be made on the date of the signing of the contract must also be rejected. The Commission at the time that it determined the grant fee, based on all the facts of and surrounding the transaction found that the $60,000 advance, in reality, was a payment on equity rather than the creation of a debtor-creditor relationship, and therefore was part of the purchase price. It occurred over four months prior to the Commission's action consenting to the transfer and was not a separate transaction, but rather a part of the entire purchase and sale transaction. No facts have been submitted that would cause us to disturb the initial computation of the grant fee of $5,810.00.

Accordingly, your request for partial refund is denied.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
Mrs. HENRY MCGIVERON, ABERDEEN, WASH.
Concerning Fairness Doctrine Re Aberdeen Broadcasting Co., Radio Station KXRO

DECEMBER 8, 1972.

ABERDEEN BROADCASTING CO.,
Radio Station KXRO,
Post Office Box 47,
Aberdeen, Wash. 98520.

GENTLEMEN: This is in reference to the complaint of Mrs. Henry McGiveron, dated January 26, 1972, against Radio Station KXRO, Aberdeen, Washington.

In her complaint of January 26, 1972, Mrs. McGiveron states that on the morning of November 1, 1971, the licensee broadcast three editorials in support of a bond issue which was to be voted on by the citizens of Aberdeen, Washington, the following day; that she was the spokeswoman for the "Committee Opposed to the 1971 Bond Issue"; that a statement was presented to the station for broadcast which supported the Committee's views but that an opportunity to broadcast these contrasting views was denied.

In response to the complaint the station states that the Aberdeen School District held a public hearing on the proposed bond issue and received no opposition; that the bond issue was then placed on the November ballot; that the station aired stories on the bond issue and solicited comments from the listening audience; that it received no comments and therefore assumed that the bond issue was non-controversial; that shortly before the election the Committee headed by Mrs. McGiveron distributed handbills opposing the bond issue; and that subsequently the radio station broadcast the alleged editorials to attempt "to put the context of the handbills in perspective". The licensee further states that it misinterpreted the handbills' meaning, believing that the Committee's opposition was to Phase II of the bond issue, which was not on the upcoming ballot; that the licensee now acknowledges a controversial issue did exist; and that although the election is over, it plans to broadcast the views of the committee preceding the next election on Phase II of the bond issue.

In reply to the licensee's response, the complainant states that the licensee's reasons for failing to grant reasonable time to the Committee to respond to the editorials broadcast are of little consolation and by no means justified; that the Committee's opposition to the bond issue was known to the Superintendent of Schools, whom the licensee relied on for information concerning opposition to the bond issue; and that

the Committee's opposition was the topic of several local newspaper articles published on a number of days prior to the election (October 29–31 and November 1, 1972).

As you know, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. Initially, whether or not any given problem is a controversial issue of public importance is determined by the individual licensee. "The existence of an issue on which the community is asked to vote must be presumed to be a controversial issue of public importance, absent unusual circumstances not here present. It is precisely within the context of an election that the fairness doctrine can be best utilized to inform the public of the existence of and basis for contrasting viewpoints on an issue about which there must be a public resolution through the election process." *King Broadcasting Company*, 23 FCC 2d 41 (1970). The controversial nature of the particular issue involved is apparent from the information furnished herein. The newspaper articles referred to above concern the Committee's opposition to the bond issue, and it therefore appears that you knew or should have known of the opposition. See *King Broadcasting Company, supra.* Thus, KXRO, on the day before the election, when it knew or should have known that the bond issue was a controversial issue of public importance and that there were contrasting views, broadcast editorial material which presented only one side of the controversy and failed to allow the opposition the opportunity to present their side of the controversy. It appears, therefore, that Radio Station KXRO failed to comply with the fairness doctrine, an obligation which the Commission expects of all licensees, and this letter will be associated with the station's files where it will be available for appropriate future consideration.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 72-1112

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
SIDNEY WILLENS AND RUSSELL MILLIN
Concerning Fairness Doctrine and Personal Attack Rule Re Metromedia, Inc.

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 8, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONERS H. REX LEE AND WILEY NOT PARTICIPATING

1. The Commission has before it for consideration two petitions for partial reconsideration of the Commission's decision in *In re Complaint by Sidney Willens and Russel Millin*, 33 FCC 2d 304 (1972), filed by Metromedia, Inc., licensee of KMBC–TV Kansas City, Missouri, and by complainant F. Russel Millin, a lawyer in Kansas City. The original complaint alleged, inter alia, that (1) KMBC–TV personally attacked named judges of the 16th Judicial Circuit Court of Jackson County, Missouri, in a 17 part Probe Report series broadcast in its evening news program by implying that they had defied the law in sentencing defendants, but failed to give the judges timely notice, a transcript of the broadcasts, or reasonable opportunity to respond; (2) KMBC–TV violated the Fairness Doctrine by denying the public the right to hear a third significant contrasting viewpoint on issues raised in the Probe series; (3) KMBC–TV's offers of time to the judges contained arbitrary and unreasonable conditions unduly restricting the proposed responses; and (4) the series evidenced an overall pattern of irresponsible reporting and was willfully and deliberately misleading and inaccurate.

2. The Commission held that no personal attack had been made since the licensee's statements contained no personal vilification of the judges and did not impugn their character or honesty. It also held that (1) the Fairness Doctrine was not violated because KMBC–TV reasonably determined that Mr. Willens' proposed third viewpoint did not represent a significantly differing viewpoint on the issue raised in the Probe reports; (2) the conditions the licensee imposed on the proposed response had an unduly restrictive effect and, therefore, tended to inhibit debate on the issues, and (3) in the absence of extrinsic evidence that the licensee had deliberately misrepresented or distorted facts in the series, consideration of allegations of irresponsible reporting was not warranted.

3. Mr. Millin seeks reconsideration of the Commission's decision on the following issues: (1) that KMBC–TV violated the personal attack rules; and (2) that the Probe reports were an example of irresponsible

reporting, were willfully and deliberately misleading and inaccurate, and contained easily avoidable errors in that the licensee's investigative reporter failed to inspect all public materials available relevant to the cases under investigation, with the result that gross misstatements of fact were broadcast. Reconsideration of these issues is opposed by Metromedia, Inc., which argues that complainant's petition should be dismissed as not timely filed,[1] and because no new factual statements or arguments, not previously considered by the Commission, are advanced.

4. We note that complainant's petition is procedurally defective since filed more than thirty days after the public release of our initial decision. Our original decision was dated January 12, 1972. Complainant's petition for reconsideration, dated February 24, 1972, was received February 28, 1972 in violation of 47 U.S.C. § 405 and 47 C.F.R. § 1.106(f), and is consequently dismissed.

5. Metromedia seeks reconsideration of that portion of the Commission's opinion which held that the conditions or guidelines attached to licensee's offers of response time were unduly restrictive and inhibiting of the presentation of opposing views. The conditions were included in the following paragraph:

"We will produce a program containing whatever response you choose to make provided (i) the format and content of such response does not contain any defamatory, scandalous, or obscene matter or any matter contrary to law or any of the rules and policies of the Federal Communications Commission ("FCC"); (ii) the program will not subject us or any person or group to ridicule or public censure; (iii) the program will not contain any 'personal attack' as defined by the FCC; and (iv) the content of said program will be such that we will not be obligated to offer any other person or group time to respond thereto under the Fairness Doctrine of the FCC."

The Commission ruled that the first condition was proper, but that (ii) through (iv) were unduly restrictive. Metromedia asserts that this decision should be reversed because (1) it violated elementary tort law, (2) it tends to restrict rather than foster debate, and (3) the guidelines are reasonably designed to produce fairness replies responsive to the issues in controversy.

6. First, it is argued that "ridicule," prohibited in the second guideline, is not, contrary to the Commission's holding, a legitimate form of argument since it is one element of the tort of defamation. Metromedia believes that such responsive guidelines are necessary to protect the licensee and the responding spokesman from actions for defamation and to ensure the licensee's compliance with all legal principles and regulations. Second, Metromedia maintains, with respect to guideline (iii), that personal attacks are not essential for effective public debate on a controversial issue of public importance, and it is therefore not unreasonable to exclude them from the statement of an opposing viewpoint. Metromedia states that guideline (iv) is primarily intended to ensure that the responsive program material be germane to the issues already discussed, and that the absence of such standards will force broadcasters to indulge in self-censorship.

[1] Metromedia argues that § 405 of the Communications Act states that a petition for rehearing must be filed within 30 days of the date of public release of the order or decision complained of, and that the Commission is without authority to extend the filing period. Complainant replies that the Commission has authority to reopen hearings which would include the lesser right to consider late-filed petitions where justice so requires.

7. Having held that the personal attack rules are not applicable to this case, we note that all parties have agreed that the Probe series presented a viewpoint on a controversial issue of public importance in Kansas City, Mo., and that consequently the Fairness Doctrine is applicable.[2] Under the Fairness Doctrine, the licensee must afford a reasonable opportunity for the presentation of opposing views when it presents a viewpoint on a controversial issue of public importance. We have consistently held that the licensee has great discretion in selecting the subjects to be discussed, the format of the presentations, and the spokesmen. *In the Matter of Editorializing by Broadcast Licensees*, 13 FCC 1246, 1251 (1949). We have also held that a licensee is responsible for all that is broadcast over his facilities, *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 20 R.R. 1901, 1911 (1960), and that a "licensee may establish standards governing the acceptability of broadcast material and is free to exercise his discretion in deleting portions of programs because they may not meet these standards . . ." *In Re Complaint by Judy Collins*, 24 FCC 2d 741 (1970). In addition, we have recognized that licensees may properly insist that a Fairness Doctrine reply be responsive and germane to the issue(s) raised in the initial broadcast, *In Re Complaint of John Birch Society*, 11 FCC 2d 790, 792 (1968), in order that significant differing viewpoints may be presented without triggering a continuous cycle of response after response.[3]

8. Licensees' discretion in this area is not unlimited, however. In a recent case, *In Re Complaint by Shady Wall*, 31 FCC 2d 484 (1971), the reasonableness of particular conditions imposed by the licensee on a fairness response was also an issue. It was held, under delegated authority, that the licensee had imposed unreasonable limitations on the complainant's proposed fairness response where the primary issues in controversy were complainant's allegations concerning the misconduct of a public official, and the licensee limited complainant's fairness response to a speech by the official to commentary on the personal references made by the official against the complainant. The consequence of these restrictions was to foreclose debate on the primary issues.

9. The thrust of these decisions is that the licensee has discretion to impose reasonable limitations on anyone utilizing his facilities to present a point of view on a controversial issue of public importance under the Fairness Doctrine, but that he may not unreasonably impair robust debate by partisans on public issues.

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[2] The Commission ruled in the initial decision that Metromedia had fulfilled its fairness obligation by affording time to the Kansas City Bar Association for the presentation of an opposing viewpoint, and that the licensee was not unreasonable in determining that complainant's proposed third viewpoint did not merit broadcast time since it was not significantly different from the Bar Association's response.

[3] See also the Commission's Memorandum Opinion and Order establishing the Personal Attack and Political Editorializing rules under Part 73, 8 F.C.C. 2d 721, 727 (1967). The Commission stated there that the phrase "reasonable opportunity to respond" was flexible in that the "opportunity may vary with the circumstances" and that "the licensee may impose reasonable limitations on the reply, such as requiring . . . a [responding] spokesman . . . to avoid any Section 315 'equal opportunities' cycle." In addition, the problem of a fairness response triggering additional fairness obligations was recognized by the Court in *Democratic National Committee* v. *F.C.C.*, 460 F. 2d 891, 903 (D.C. Cir., 1972). There the Court rejected the request of the Republican National Committee for broadcast time to reply to the fairness response of the Democratic National Committee (DNC) where the DNC had presented a response to viewpoints expressed in a series of Presidential speeches. The Court said that a contrary ruling would lead to a course of "request after request" and refused "to sanction the commencement of such an unending cycle."

10. Turning now to the conditions in contention here, we note that Metromedia's stated intentions in imposing the guidelies, i.e., to protect the licensee from defamation actions and to insure responsive fairness replies, are reasonable and within the licensee's area of discretion. We do not believe, however, that guidelines (ii) and (iv) are phrased so as to reasonably achieve their intended purpose. When imposed in the preliminary phase of soliciting a responding viewpoint on a controversial issue of public importance, where there is no intention of granting live, unedited broadcast time, we believe they may tend to stifle public debate by unduly limiting the type and content of possible responses.

11. Both conditions (ii) and (iv) are vague and fail to state explicitly what type of speech licensee intends to exclude. First, the exclusion of "ridicule" and "public censure" in guideline (ii), if intended merely to exclude defamatory speech, is superfluous in view of the wording of guideline (i). Second, while "ridicule" can be an element or form of defamation (Prosser, Handbook of the Law of Torts 742 (4th ed. 1971)), clearly there are many instances in which statements containing "ridicule" will not be actionable. It is unreasonable therefore to exclude an entire type of speech in a prospective fairness response without regard to the circumstances of the case and the content of the particular speech being offered. Moreover, Metromedia has not explained nor can we perceive why that portion of condition (ii) which reserves to Metromedia the right to reject material subjecting Metromedia to ridicule or censure is warranted. Certainly, Metromedia would have no reason to fear legal action for airing a response critical of its own activities.

12. Concerning guideline (iv), we have held, as the above cited cases indicate, that the licensee has discretion to require that fairness replies be responsive. This discretion is necessary in view of the fact that the proportion of broadcast time devoted to consideration of public issues is limited. It is consequently important that fairness responses be germane to the principle issues in controversy so that this limited resource is not dissipated in discussion of secondary or tertiary issues. However, we believe that guideline (iv) is too vaguely stated to achieve its intended purpose when applied prospectively and consequently places an inhibiting burden on the speaker.

13. Finally, we reaffirm our objection to the prohibition on "personal attacks" in guideline (iii). Where the controversial public issue in question is the honesty or integrity of some person or group, for example, it would be unreasonable to bar discussion on the very issues in controversy.

14. In sum, while we affirm the licensee's discretion to make reasonable determinations as to what material should be broadcast in a fairness response, we find that guidelines (ii), (iii), and (iv), considered as prior conditions, are unreasonable. We express no view on the exercise of the licensee's responsibility to review the suitability of material proposed to be presented over his facilities and to insure that the public is fully informed of all significant views on controversial issues of

public importance. We have dealt here only with the impact of general prospective conditions.

15. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Mr. F. Russel Millin is DISMISSED, and the petition for reconsideration of Metromedia, Inc. is DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-347

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH-7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH-7262

MEMORANDUM OPINION AND ORDER

(Adopted November 28, 1972; Released November 29, 1972)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSTAINING.

1. The above-captioned mutually exclusive applications for a new FM broadcast station in Shell Lake, Wisconsin were designated for hearing by Commission Order, FCC 71-406, released April 29, 1971. After hearing, Administrative Law Judge Millard F. French issued his Initial Decision, FCC 72D-22, released March 28, 1972, which preferred the Gladdenbegk application under a standard comparative issue on grounds of diversification and greater coverage. The Review Board now has before it a petition to amend application, filed by Charles R. Lutz on May 18, 1972.[1] The Lutz petition to amend must be denied. Applications may be amended as a matter of right before they are designated for hearing; however, where, as here, the hearing has been completed and the Initial Decision released, such amendments are permitted only upon a showing of good cause.[2] It is well established that petitions to amend applications involved in comparative proceedings will not be accepted where those amendments would affect the comparative evaluation of the applicants in the proceeding.[3] In the instant case, the Presiding Judge preferred Gladdenbegk's application, in part, because of its greater coverage; Lutz's proffered amendment is designed to remove that preference; and, therefore, allowance of the amendment could accord Lutz a comparative advantage. Moreover, if the amendment were accepted, it would necessitate reopening of the record, further hearing, and the preparation of further findings and conclusions. Not only has petitioner failed to make a showing to warrant a reopening of the record at this stage of the proceeding,[4] but

[1] The Board also has before it: an opposition, filed by Erwin Gladdenbegk on May 24, 1972, an opposition filed by the Broadcast Bureau on May 30, 1972, and Lutz's reply to those oppositions, filed June 16, 1972.

[2] 47 CFR 1.522(b).

[3] *Louis Vander Plate*, 20 F.C.C. 2d 185, 17 RR 2d 577 (1969); *Sands Broadcasting Corp.*, 61 M-1218, 22 RR 106.

[4] See *Edwin R. Fischer* v. *Federal Communications Commission*, 135 U.S. App. D.C. 134, 417 F. 2d 551 (1969).

such a course of action would prejudice its competitor, thereby providing further reason for not accepting the amendment.[5]

2. Accordingly, IT IS ORDERED, That the petition to amend application, filed May 18, 1972, by Charles R. Lutz IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[5] Lutz relies on a letter from the State of Wisconsin, Department of Transportation, dated April 20, 1972, to justify his late filing. However it is clear from that letter, that as of November, 1971, at least 4 months before the Initial Decision was released, Lutz knew that his antenna tower height could be increased.

109-020—72——3

F.C.C. 72-1052

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
GRAND VALLEY STATE COLLEGE, ALLENDALE, MICH.
For Modification or Deletion of Condition on Construction Permit

NOVEMBER 22, 1972.

GRAND VALLEY STATE COLLEGE,
c/o Station WGVC-TV,
Allendale, Mich. 49401.

GENTLEMEN: This refers to your request filed October 2, 1971, for modification or deletion of the condition on the construction permit of noncommercial educational television broadcast station WGVC-TV, channel *35, Grand Rapids, Michigan.

In support of your request, you state that any member of the Board of Control of Grand Valley State College who is an officer, director or stockholder of a corporation which owns or controls television broadcast station WZZM-TV, channel 13, Grand Rapids, Michigan, will not participate in any activities which would involve any conflict of interest between the control, management or operation of channel 35, Grand Rapids, Michigan, and the operation of television broadcast station WZZM-TV, channel 13, Grand Rapids, Michigan. On the basis of your representations, the Commission hereby grants your request for deletion of the condition on the construction permit of station WGVC-TV, Grand Rapids, Michigan.

Commissioner Johnson dissented.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-355

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of MICHAEL D. HAAS, BAY SAINT LOUIS, MISS.	Docket No. 19465 File No. BP-18154
ROBERT BARKER, JR., GEORGE SLIMAN, AND F. M. SMITH, D.B.A. GULF BROADCASTING CO., GULFPORT, MISS.	Docket No. 19466 File No. BP-18462
SOUTHLAND, INC., LAUREL, MISS.	Docket No. 19415 File No. BPH-7405
SOUTH JONES BROADCASTERS, INC., ELLISVILLE, MISS.	Docket No. 19416 File No. BPH-7445
HWH CORP., MCCOMB, MISS. For Construction Permits	Docket No. 19467 File No. BP-18478

MEMORANDUM OPINION AND ORDER

(Adopted December 1, 1972; Released December 6, 1972)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSTAINING.

1. The mutually exclusive applications of Michael D. Haas (Haas), Robert Barker, Jr., George Sliman and F. M. Smith, d/b as Gulf Broadcasting Company (Gulf), and HWH Corporation (HWH) for new standard broadcast stations in Bay Saint Louis, Gulfport and McComb, Mississippi, respectively, were set for consolidated hearing by Commission Memorandum Opinion and Order, FCC 72-232, released March 23, 1972, 37 F.R. 6420, published March 29, 1972. Southwestern Broadcasting Company (Southwestern), licensee of standard broadcast station WAPF, McComb, Mississippi, was made a party to this proceeding pursuant to its petition to intervene by an order of the Administrative Law Judge, FCC 72M-674, issued May 17, 1972. Southwestern has now filed a petition to enlarge the issues in this proceeding seeking addition of the following issues: [1]

a. To determine whether HWH Corporation misrepresented material facts to the Commission in the community problems survey exhibits to its application.

b. To determine whether HWH Corporation actually consulted with community leaders and members of the general public, pursuant to Commission requirements.

c. To determine whether HWH Corporation may reasonably be expected to exercise diligently that degree of responsibility required of a Commission licensee.

d. To determine, in light of the foregoing, whether HWH Corporation possesses the necessary qualifications to be a licensee of the Commission.

Southwestern concedes that its petition is untimely filed; however, it notes that Section 1.229 of the Commission's Rules contemplates the

[1] Also before the Board for consideration are: (a) Broadcast Bureau's comments, filed July 11, 1972; (b) opposition, filed July 24, 1972, by HWH; and (c) reply, filed August 11, 1972, by Southwestern.

109-020—72——4

consideration of late-filed petitions to enlarge when good cause for the tardiness is shown.[2] The petitioner here contends that since it was not made a party until more than fifteen days after the notice of hearing was published, its instant petition should be considered. It further contends that the nature of the questions raised by its petition are such that an extensive investigation was necessary and that in these circumstances it proceeded with due diligence to file its petition.

2. In support of the requested issues, Southwestern notes that HWH, an applicant for a new station in McComb, Mississippi, in exhibit 5 of its application represented that it had made an intensive survey by telephone of over 124 members of the Negro community and that it had also conducted 31 personal interviews, plus other interviews of leaders in the Negro community. Among those said to have been personally interviewed were Nathaniel H. Lewis, 838 Argyle Street, McComb, Mississippi; Jerry Gibson, 302 Marquette Avenue, McComb, Mississippi; and Joe White, R3, Box 119, McComb, Mississippi. Southwestern also notes that HWH, in its exhibit 5a, which was filed on May 24, 1972, as an amendment to its application, purports to have interviewed, during February and March of 1971, Nathaniel H. Lewis, Jerry Gibson and Windsor Gay and in exhibit 5b, filed as an amendment to its application on November 29, 1971, HWH purports to have interviewed Nathaniel H. Lewis of McComb, Mississippi. Southwestern contends that HWH did not contact Mr. Windsor Gay, Mr. Joe White or Mr. Jerry Gibson, and that Mr. Nathaniel H. Lewis was not contacted "prior to approximately six months ago". Southwestern supports this contention by four signed undated documents which it describes as affidavits. In view of these allegations, Southwestern contends the issues in this proceeding should be enlarged in accordance with its request.

3. Both the Broadcast Bureau and HWH oppose Southwestern's petition. The Bureau notes particularly that even though Southwestern was not made a party before May 17, 1972, its petition was not filed until June 26, 1972. This delay is particularly significant, the Bureau argues, since it appears that Southwestern's supporting documents were prepared in April and May of 1972. Thus, the Bureau concludes, Southwestern's delay is not warranted and its petition should be dismissed as untimely filed. Moreover, the Bureau notes that the statements relied upon by Southwestern are not properly sworn and thus do not comply with the requirements of Section 1.229(c) of the Commission's Rules.[3] HWH in its opposition, denied the allegations set forth in Southwestern's petition and has submitted affidavits from Gay, Gibson and Lewis to the effect that they now remember having been contacted by representatives of HWH and an affidavit signed by Joe White to the effect that he was contacted by a representative of HWH in 1969 and he had in fact signed a personal interview questionnaire, a copy of

[2] 47 CFR 1.229(b) reads as follows: "Such motions must be filed with the Commission not later than 15 days after the issues in the hearing have first been published in the Federal Register. Any person desiring to file a motion to enlarge, change or delete the issues after the expiration of such 15 days must set forth the reason why it was not possible to file the petition within the prescribed 15 days. Unless good cause is shown for delay in filing, the motion will not be granted."

[3] 47 CFR 1.229(c) reads as follows: "Such motions, oppositions thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof."

which is attached to his affidavit. In its reply, Southwestern contends that when its representative again checked with Mr. Gay, Mr. Gay stated that he was not in fact contacted by HWH but that he signed the affidavit because "they sat in my office all afternoon and I signed their affidavit in order to get rid of them"; and that Mr. Gibson said he was not contacted in person but that he had been contacted by telephone. Southwestern also contends that there are certain inconsistencies between the affidavits submitted by HWH and the factual situation disclosed by its exhibits. In support of these contentions, petitioner submits an affidavit of Mr. Phillip D. Brady, a partner in Southwestern.

4. The petition to enlarge issues will be denied. The Review Board agrees with the Bureau that Southwestern's explanation does not provide good cause for the delay in filing its petition to enlarge. Moreover, the allegations upon which Southwestern bases its petition to enlarge are not supported by affidavits of persons with personal knowledge of the facts. Furthermore, Southwestern's allegations are adequately refuted by properly sworn affidavits of Gay, Gibson, Lewis and White, submitted on behalf of HWH. In view of these affidavits, neither the unverified written statements of Gay, White, Gibson and Lewis submitted, with Southwestern's petition to enlarge nor Brady's self-serving affidavit submitted with its reply raise sufficient questions to warrant the enlargement of the issues.

5. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed June 26, 1972, by Southwestern Broadcasting Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-358

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of HYMEN LAKE, PINE CASTLE-SKY LAKE, FLA. For Construction Permit	Docket No. 19432 File No. BP-18491

MEMORANDUM OPINION AND ORDER

(Adopted December 4, 1972; Released December 6, 1972)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER ABSTAINING.

1. The above-captioned application for a new standard broadcast station at Pine Castle-Sky Lake, Florida, was designated for hearing together with the mutually exclusive applications of Blue Ridge Broadcasting Company, Inc. and S&S Broadcasting Company.[1] At the time Lake's application was filed, in response to instructions he listed on Table II of Section II of his application his law practice and five corporate businesses; in each of these businesses, he is president and a substantial stockholder. On June 15, 1972, Lake submitted an amendment to Table II of Section II which added his personal investments in land and securities and two additional corporate businesses in which he is an officer and substantial stockholder. During the course of the hearing, on July 11, 1972, Lake stated that he became a member of the Board of Directors of Central Park First National Bank. Lake's directorship in the bank was not included in either the original application or the June 14 amendment. On July 20, 1972, Lake submitted another amendment to Table II, Section II of the application which added his directorship in the bank to his application. Based on these facts, the Broadcast Bureau, on July 31, 1972, petitioned the Review Board to enlarge the issues in this proceeding as follows:

> To determine whether Hymen Lake has failed to comply with the provisions of Sections 1.514 and/or 1.65 of the Commission's Rules, and, if so, to determine the effect of such non-compliance on the applicant's basic or comparative qualifications to be a Commission licensee.[2]

2. The Board is in full accord with the Bureau's contention that the instructions on Table II of Section II of FCC Form 301 require Lake to disclose all of those businesses which were not included in his original application but which were subsequently called to the Commission's attention by his June 15, 1972 amendment.[3] Those instructions are clear

[1] The S&S and Blue Ridge applications were subsequently dismissed at the request of the applicants.

[2] The Board also has before it an opposition, filed August 25, 1972, by Hymen Lake; and a Broadcast Bureau reply, filed September 6, 1972.

[3] Instructions: The purpose of Table II is to obtain information concerning the occupation, business and financial interests, at the present time and during the past five years, of the applicant and of each party to this application named in Table I. In *column* (*a*), list the names of all individuals or organizations listed in *column* (*a*) of Table I. In *column* (*b*), state the principal occupations and businesses in which each party named is engaged at the present time or has been engaged at any time during the past five years, and, in addition, state any other business or financial enterprise in which such party has

and unambiguous and it is difficult to comprehend how an applicant would fail to understand them. Moreover, Lake should have reported the directorship in Central Park First National Bank within thirty days after he became a director.[4] Thus, ordinarily, addition of the issue requested by the Broadcast Bureau would be appropriate. However, pursuant to agreement by the counsel, Lake testified during the course of the hearing in this proceeding concerning his failure to include those businesses in his application and his subsequent amendment. He testified, *inter alia*, that over the past twenty years he has had considerable experience in filling out government forms and that usually the purpose of those disclosures was to determine his financial responsibility, and that it had not always been necessary to disclose all of his business interests.

3. It is apparent from Lake's testimony that he did not completely read the instructions which were a part of Table II.[5] [6] It is also apparent, since Lake voluntarily disclosed all of the information now before the Review Board, that he had no intent to withhold information from the Commission or otherwise mislead it. The Board has considered Lake's testimony and is satisfied that, in the circumstances of this case, where there are no comparative considerations, his failure to disclose all of his business interests as required by the Commission,[7] and his subsequent failure to properly amend his application would not be decisive. Since there are no comparisons to be made and the hearing has already been concluded it does not appear that the public interest would be served by adding the issue requested by the Broadcast Bureau. In the circumstances here, the public interest would best be served by allowing this case to proceed to a conclusion. *Cf. Capital City Communications, Inc.*, FCC 72–987, released November 14, 1972, — FCC 2d —.

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed July 31, 1972, by the Broadcast Bureau IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

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now or within the past five years has had either a 25% or greater interest or any official relationship. In each case, state in *column* (*b*) the firm name, the principal place of business and the nature of the business engaged in. In case the party has been associated in business with any other person or persons, state the name of each such other person. In *column* (*c*), state the extent and nature of the interest, official relationship, employment, or association giving approximate dates.

[4] 47 CFR 1.65.

[5] Lake testified that he looked at the form and saw the phraseology "State principal occupations or business" and assumed that, since many of his businesses were related, an overview was all that was required.

[6] Lake's statement filed with his June 14 amendment that, due to the press of other business commitments he overlooked the necessity to keep his applications up-to-date, further buttresses our view that even at that date he had not carefully read the instructions on the form. Footnote 3, *supra*.

[7] 47 CFR 1.514.

F.C.C. 72-1067

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
INTERURBAN BROADCASTING CORP., LAUREL, MD.
For Partial Refund of Grant Fee

NOVEMBER 29, 1972.

INTERURBAN BROADCASTING CORP.,
Post Office Box 42,
Laurel, Md. 20810

GENTLEMEN: This refers to your request for partial refund of the $6,500 grant fee paid February 11, 1972, in connection with the transfer of control application (BTC-6730) from I. Lewis Sandler and Carita Sandler to Sheftell Communications, Inc.

The basis of your request submitted by your counsel is that only two acres of the 20 acres that were covered by the contract underlying the assignment are used for broadcast purposes. You claim that a fair valuation of the property not used for broadcast purposes is $80,000 and that the grant fee should be reduced by $1,600.

Examination of the ground system of Station WLMD indicates that it covers much more than 2 acres, possibly as much as 13 acres exclusive of any other appurtenances. The files indicate that the main studio is also located at the transmitter site. Since substantially all, if not all, the acreage is used for broadcast purposes, the claim is not well founded.

In any event, the Commission will not exclude assets passing under a contract of sale that are a part of an assignment or transfer, unless a fully documented showing has been made in the application to indicate that such assets are in nowise connected with broadcast operations. It is a burden on the Commission's processes to consider such questions, and they will not be considered in the absence of very special circumstances.

Accordingly your request for partial refund is denied.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1093

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of MARSH MEDIA, LTD., AMARILLO, TEX. For Renewal of License of Station KVII-TV	BRCT-443

NOVEMBER 29, 1972.

Certified mail—return receipt requested.
MARSH MEDIA, LTD.,
Television Station KVII-TV,
Post Office Box 925,
Amarillo, Tex. 79105.

GENTLEMEN: The Commission has under consideration (1) your application for renewal of license for Station KVII-TV (BRCT-443), (2) the Commission's letter of May 26, 1971, to Marsh Media, Ltd., concerning the "hypoing" of ratings through the use of questionnaires which were mailed to persons in the Amarillo market before or about the same time that audience surveys were conducted in the spring and fall of 1970, (3) your responses of June 10 and July 15, 1971, and (4) the results of an investigation conducted August 18 through 25, 1971, into the affairs of KVII-TV, during which Commission representatives observed that KVII-TV was engaging in the broadcast of inadequately qualified audience claims in contravention of Commission policy.

In our letter of May 26, 1971, we cited our Public Notice concerning broadcast ratings adopted October 27, 1965, in which we stated that we would take into consideration the guidelines set forth in the Federal Trade Commission statement of July 8, 1965. These guidelines stated in part that licensees should not engage in activities calculated to distort or inflate survey data. It appeared that you had twice engaged in "hypoing" of ratings through the mailing of tens of thousands of questionnaires which appeared to constitute "unusual promotional efforts made at the time of audience surveys and that you engaged in activities which were likely to result in distorted audience ratings." You were requested to submit a statement as to the procedures, if any, that you had adopted or proposed to adopt to assure compliance with the Commission's policies concerning "hypoing."

In a response dated July 15, 1971, you stated that in your view your use of the questionnaires "did not constitute unusual advertising or promotional efforts designed to increase audience *only during the survey period.*" However, you stated in view of the Commissioner's conclusions, you would "make no further use of mail questionnaires unless they are so far in advance of the commencement of rating periods as to preclude any reasonable question being raised as to the propriety of their use." You also stated that in the future your use of billboards in

advance of and during rating periods would not substantially vary from your normal practice.

During a field investigation conducted in Amarillo from August 18 through 25, 1971, members of the Commission staff viewed a visual promotional announcement broadcast by KVII–TV which was composed of an outline map of the United States, upon which a large figure "1" was superimposed. The inscription accompanying this map identified KVII–TV as the "nation's number one ABC station in prime time." A qualifying statement preceded by an asterisk appeared in the lower left corner of the announcement slide in type so small as to be unreadable on the television screen. When enlarged to readable size, this statement read: "As determined from Feb/Mar, 1971, American Research Bureau TV audience estimates, and based on Metro share of the audience in three station network affiliate markets, where stations have comparable facilities. In all cases audience data is subject to the limitations of the sampling method and may, or may not, be accurate to any precise mathematical degree."

The manager of KVII–TV, John Tyler, stated to the Commission staff that the announcements had been used from August 17 through noon on August 27, 1971, when they were discontinued. Mr. Tyler said the announcements were discontinued immediately upon his being informed by the staff that they were unable to read the six line disclaimer on the air.

The Commission's October 27, 1965, Public Notice adopted the following language from the Federal Trade Commission statement which accompanied it:

> It is also improper to cite or quote from a survey report or survey data in such a way as to create a misleading impression of the results of the survey, by unfairly basing audience claims on results achieved only during certain parts of the broadcast day or on a survey of only a segment of the total potential audience.

By broadcasting the claim that KVII–TV is the nation's number one ABC station in prime time, without making legible to your viewers the qualifications to the major claim, you appear to have created "a misleading impression of the results of the survey," in contravention of Commission policy.

Although this conduct is not identical with that about which you were previously warned, both types appear likely to have the effect of misleading your audience and advertisers as to the size of your normal audience. It appears that you have three times violated the stated intent of the same Commission policy, which requires licensees to guard the public against deception involving audience surveys.

Accordingly, in view of your apparent failure to exercise the degree of responsibility required of licensees as set forth in the Public Notice of October 27, 1965, we are unable to make an affirmative finding that the public interest, convenience and necessity would be served by the renewal of your license for the normal term. Instead, and in order that we may have an earlier opportunity to review the operation of Television Station KVII–TV, we are granting short term renewal of license for the period ending December 1, 1973.

Commissioner Wiley concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-1103

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR PERMANENT EXEMPTION FROM THE RADIOTELEGRAPH AND RADIO DIRECTION-FINDING APPARATUS PROVISIONS OF TITLE III, PART II OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, FILED ON BEHALF OF THE U.S. CARGO VESSEL NORTH RIVER, 2800 GROSS TONS

ORDER

(Adopted December 6, 1972; Released December 8, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. The Commission having under consideration an application (File Number X-1119) filed by the City of New York for permanent exemption from the radiotelegraph and radio direction-finding apparatus provisions of Title III, Part II of the Communications Act of 1934, as amended, filed on behalf of the United States cargo vessel NORTH RIVER, 2800 gross tons, owned and operated by the City of New York.

2. The applicant represents that the NORTH RIVER carries a crew of 8 persons; is engaged in the disposal of sewage sludge, and makes regular trips each day from various pollution control plants in the City of New York, proceeding along Ambrose Channel extended to a point 4.5 nautical miles southeast of Ambrose Light, at which point it dumps its cargo of sewage sludge in the open sea and returns immediately; that the vessel is in the open sea for less than two hours during each round trip; that the vessel never leaves the harbor during periods of high wind or fog; that the vessel is equipped with a licensed VHF radiotelephone station, with a transmitter rated at 25 watts output power operating in the band 156 to 162 MHz. Further, that there are seven United States Coast Guard stations operating in the area which maintain a continuous watch on 156.8 MHz and that there is solid VHF coverage for 20 to 25 miles from all shore lines which encompasses an area considerably larger than the route of the NORTH RIVER.

3. We conclude that, when considering the above-described conditions of the voyages of the NORTH RIVER and other circumstances as set out herein, it would be unreasonable and unnecessary to compel the vessel to comply with the radiotelegraph and radio direction-finding apparatus provisions of Title III, Part II of the Communications Act of 1934, as amended; however, it would be desirable and feasible for the vessel to maintain a VHF radiotelephone

capability for the safety of the vessel and other vessels similarly equipped.

4. IT IS ORDERED, That the United States cargo vessel NORTH RIVER, 2800 gross tons, be EXEMPT from the radiotelegraph and radio direction-finding apparatus provisions of Title III, Part II of the Communications Act of 1934, as amended, when navigated in the open sea in the vicinity of Ambrose Light at a maximum distance of not more than 10 nautical miles from the nearest land: Provided, That there is installed an appropriately licensed VHF radio-telephone station fully complying with the provisions of Title III, Part III of the Commission's rules and regulations made pursuant thereto.

5. IT IS FURTHER ORDERED, That, this exemption may be terminated by the Commission at any time if, in the Commission's discretion, the need for such action arises.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-366

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BROADCASTING CO. (WGHP-TV), HIGH POINT, N.C. For Renewal of License	Docket No. 18906 File No. BRCT-574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT-4302

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 8, 1972)

BY THE REVIEW BOARD:

1. Before the Review Board are: (a) a petition to enlarge issues, filed April 3, 1972, by Furniture City; [1] and (b) a petition to enlarge issues, filed April 13, 1972, by Southern.[2] Each applicant requests a Rule 1.65 issue against the other.[3] In addition, Southern asks for a misrepresentation issue against Furniture City. The two petitions are being considered together because each applicant alleges that the other failed to report the same anti-trust suits pending against principals of both. Southern also alleges that Furniture City failed to report business interests of several of its principals.

Failure to Report Antitrust Suits

2. Both applicants request Rule 1.65 issues against the other for failure to report the involvement of certain principals of the applicants in two suits brought by the United States of America against the Wachovia Corporation (Wachovia) [4] and the Wachovia Bank and

[1] Also before the Review Board are the following related pleadings: (a) opposition, filed April 13, 1972, by Southern; (b) Broadcast Bureau's comments, filed April 13, 1972; and (c) reply, filed April 25, 1972, by Furniture City.

[2] Also before the Review Board are the following related pleadings: (a) Broadcast Bureau's opposition, filed April 26, 1972; (b) opposition, filed April 26, 1972, by Furniture City; and (c) reply, filed May 8, 1972, by Southern.

[3] By Memorandum Opinion and Order, 33 F.C.C. 2d 1044, 23 RR 2d 1197, released March 22, 1972, the Review Board added the following 1.65 issue against Furniture City because of that applicant's failure to report an anti-trust suit brought by the State of Georgia against one of its stockholders:

> To determine whether Furniture City Television Company, Inc., has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of substantial changes in its application and, if not, the effect of such noncompliance on the basic and/or comparative qualifications of the applicant to be a broadcast licensee.

[4] Suit (Civil Action No. 2656) was brought on April 24, 1970, under provisions of the Clayton Anti-Trust Act (15 USC Section 18 and 15 USC Section 25) in the United States District Court for the Western District of North Carolina against the Wachovia Corporation (Wachovia) and American Credit Corporation (American). The complaint, a copy of which is attached to the petition, alleges that the acquisition by Wachovia of American could eliminate or substantially reduce retail automobile financing, other types of financing and the sale of credit life insurance in North Carolina and other sections of the country as well as eliminate Wachovia as a potential entrant into consumer lending and factoring.

Trust Company, N.A. (Wachovia Bank).[5] Furniture City alleges that Southern's principals, Albert L. Butler, Jr., and Gordon Hanes,[6] are directors and "substantial" stockholders of Wachovia.[7] Southern argues that Furniture City failed to report that five of its principals were either directors or stockholders of the High Point Branch of the Wachovia Bank.[8] Both petitioners cite the Commission's 1951 *Report on Uniform Policy as to Violation by Applicants of Laws of the United States*, Vol. 1, Part III, RR 91:495, to support their two major arguments, namely, that the Commission is very concerned about an applicant whose principals are involved in anti-trust suits and the effect the involvement may have upon the applicant's character qualifications;[9] that anti-competitive practices are difficult to uncover and to correct. Maintaining that it is incumbent upon an applicant to keep the Commission informed of activities which reflect upon its qualifications to be a Commission licensee, the petitioners conclude that failure to timely report[10] the involvement of the principals by the other applicant in the suits warrant a Rule 1.65 issue against the other.[11] Southern further argues that the existing Rule 1.65 issue against Furniture City (see note 1, *supra*) allows it to introduce evidence relating to Furniture City's failure to timely report the anti-trust suits; however, should the Board consider that issue not broad enough to encompass the requested issues, then Southern requests the addition of another Rule 1.65 issue and a misrepresentation issue.

3. Opposing Furniture City's petition, Southern argues that the petition is untimely filed and that Furniture City has not shown good cause for the delay, as required by Section 1.229(b) of the Commission's Rules. Southern contends that Furniture City has confused the reporting requirements of FCC Form 301 (for new applications) with those of FCC Form 303 (for renewal applications); FCC Form 301, Section II, question 10(b) and 10(c), requires the applicant for a

[5] Suit (Civil Action No. C–135, W571) was brought on June 22, 1971, under provisions of the Sherman Anti-Trust Act (15 USC Section 1 and 15 USC Section 4) in the United States District Court for the Western District of North Carolina against the Wachovia Bank and Trust Company, N.A. (Wachovia Bank). The complaint, attached to the petition, alleges that Wachovia Bank by entering into a contract with Holly Hill Realty, the lessor of space in the Holly Hill Mall Shopping Center, has suppressed and restrained other commercial banks to attract the deposits of the tenants of Holly Hill and would generally affect competition between Wachovia and other commercial banks in Burlington County, North Carolina.

[6] Furniture City notes that according to Southern's Ownership Report (F.C.C. Form 323), filed with the Commission on May 26, 1971, Butler is shown as owning 67,200 shares (12%) of Southern's stock and Hanes as owning 22,891 (4.09%) shares.

[7] Relying upon a Registration Statement (Form F.R. Y–5) filed by Wachovia Corporation with the Board of Governors of the Federal Reserve System on May 3, 1971, Furniture City asserts that Butler and Hanes are directors of Wachovia and Butler owns 2,898 shares of common stock.

[8] Southern claims the following stockholders of Furniture City are either directors or stockholders of the High Point Branch of the Wachovia Bank: George W. Lyles, Jr., John G. Hutchens, Jack H. Campbell, Sidney A. Gayle, Jr., and J. Harris Covington.

[9] Furniture City cites *General Electric Company*, 2 RR 2d 1038 (1964), to support its assertion that the Commission has long been concerned over anti-trust violations by applicants for renewal of licenses. Furniture City also cites the following cases: *Patroon Broadcasting Co., Inc.*, 2 F.C.C. 2d 431, 6 RR 2d 939 (1966); *Rockland Broadcasting Co.*, 24 RR 741 (1962); and *Syracuse Television, Inc.*, 5 RR 2d 557 (1965).

[10] Although Southern did inform the Commission by a letter to the Commission's Secretary of the pending action, it did not do so until March 30, 1972, Furniture City maintains. Not only was the letter a belated and untimely attempt to comply with Rule 1.65, according to Furniture City, but also the letter contained the following discrepancies: the letter failed to disclose Hanes' position as director of Wachovia Bank and reported Earl F. Slick, Jr., a Southern principal, as a director of Wachovia, when he is only an advisory director.

[11] Southern also submits that Section II, question 10(c), of F.C.C. Form 301, filed by Furniture City, requires the disclosure of any pending anti-trust actions against any party to the application; therefore, failure to report the suits violates that provision in Rule 1.65 which requires the applicant to keep its application current.

new broadcast facility to report whether any party to its application has violated the laws of the United States or has monopolized or attempted to monopolize radio communications, and question 10(e) further requires the new applicant to report any pending suits against any party to the application. In contrast, Southern notes, FCC Form 303, Section I, question 2—the comparable section to question 10(b) and 10(c) of Form 301—requires the renewal applicant to report any persons connected with the renewal applicant who are parties "to a suit in any Federal Court involving the monopolizing or an attempt to monopolize radio communications." According to Southern nothing in FCC Form 303 requires the renewal applicant to report anti-trust suits in fields other than communications. Also, Southern points out, all of the cases cited by Furniture City (see note 9, *supra*) deal with the failure of *new* applicants to properly update their applications to reflect the pendency of anti-trust suits against persons connected with the new application. Finally, although not required to do so, Southern states that by letter, dated March 30, 1972,[12] it notified the Commission of the involvement in the pending anti-trust actions of Hanes, Butler and Earl F. Slick, Jr., who is an advisory director of the Winston-Salem Branch of the Wachovia Bank.

4. The Bureau supports Furniture City's request, but urges the Board to designate a comparative issue against Southern as it did in *RKO General, Inc.* (*WNAC–TV*), 34 FCC 2d 265, 24 RR 2d 16 (1972). In reply, Furniture City disagrees with the Bureau's position that a comparative rather than disqualifying issue be designated, and argues that the Bureau's reliance upon *RKO* is misplaced. In *RKO*, Furniture City maintains, the applicant voluntarily made the disclosures which lead to the addition of the Rule 1.65 issue, whereas Southern informed the Commission by letter of the involvement of its two stockholders in anti-trust suits only after Furniture City revealed the presence of the two anti-trust actions involving some of its principals in amendments submitted on March 27, 1972.

5. Opposing Southern's petition, Furniture City argues that its stockholders who are directors of the Wachovia Bank are only "advisory directors". An advisory director, according to Furniture City, is without power to make final decisions in matters concerning the business of the bank, does no more than periodically serve as consultant to the bank, and is appointed, not elected.[13] Furniture City therefore argues that the anti-trust suits against the bank would not involve advisory directors; furthermore, the advisory directors hold minor shares of stock which are publicly trade on the New York Stock Exchange.[14] Therefore, in view of these factors, a Rule 1.65 issue is not warranted, Furniture City maintains.[15]

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[12] The letter was addressed to the Commission's Secretary, contained the docket numbers, and indicates service on all parties to the proceeding. See note 10, *supra*.

[13] Furniture City attaches to its opposition pleading a letter from J. T. Watson, Deputy Comptroller of the Currency of the United States, in which he states that: "Honorary or advisory members of the board of directors may be appointed by a national bank to act in advisory capacities without the power of final decision in matters concerning the business of the bank. Any listing of such honorary or advisory directors must distinguish between them and the bank's board of directors, or indicate their advisory status."

[14] The following, according to Furniture City, represents the amount of stock held by its stockholders in Wachovia: John Hutchens—.0007%, Jack Campbell—.0019%, Sidney Gayle—.0038%, George Lyles—.0076%, and J. Harris Covington does not hold stock.

[15] Furniture City argues that the Rule 1.65 issues previously designated was confined by the Board to one specified anti-trust suit and should not be expanded to encompass the present request.

6. The Broadcast Bureau, opposing Southern's request, argues that the Rule 1.65 issue which was specified against Furniture City for failure to report the pendency of an anti-trust suit, is broad enough to encompass the "new facts" raised by Southern. The Bureau further contends that Southern's request is, in reality, a request for clarification of an existing issue and, therefore, should have been addressed to the Administrative Law Judge in the first instance, citing *Western Connecticut Broadcasting Company*, 26 FCC 2d 1019, 20 RR 2d 761 (1970).[16] In reply, Southern contends that the language of the Section II, paragraphs 10(b) and 10(e) of FCC Form 301, does not draw any distinction between advisory and other types of directors.

7. The Review Board believes both applicants have pleaded sufficient allegations of fact to warrant further exploration at hearing.[17] With respect to Southern's apparent failure to report the anti-trust suits, we note that Southern in its January 4, 1972,[18] petition presented a persuasive argument supporting addition of a Rule 1.65 issue against an applicant who fails to report the involvement of one of its principals in an anti-trust suit. In its petition, Southern, in referring to an applicant's involvement in an anti-trust suit as misconduct, stated: "Clearly then, from a record of misconduct in other fields, the Commission can infer a disposition to continue such conduct in broadcast operations. Such misconduct may be such as to disqualify an applicant or it may be weighed against the applicant in the comparative process." (Footnotes omitted.) The Commission in its *Report on Uniform Policy*, *supra*, essentially said the same when it stated, "We believe, that if an applicant is or has been involved in unlawful practices an analysis of the substance of these practices must be made to determine their relevance and weight as regards the ability of the applicant to use the requested radio authorization in the public interest." (Vol. 1, Part III, p. 91.497.) As this language indicates, the Commission is concerned when the effects of legal actions pending against an applicant may have a direct bearing on the applicant's character to hold a license in the public interest; therefore, the reporting of pending legal actions cannot be limited to new applications only but must apply equally to renewal applications. *Cf. General Electric Company*, 2 RR 2d 1033 (1964); *Westinghouse Broadcasting Company*, 22 RR 1023 (1962). Accordingly, Southern's argument that the renewal application Form 303 did not require it to report the suits must be rejected.[19] The Commission is to be informed of *all* facts, whether requested in Form 303 or not, that may be of decisional significance so that the Commission can make a realistic decision based on all relevant factors. See *Reporting of*

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[16] The Bureau does not believe a separate concealment issue is warranted because the Board, in previously designating the Rule 1.65 issue, stated that concealment and the question of intent could be explored under the specified issue.

[17] The Review Board is persuaded that good cause has been shown for the late filing of Furniture City's petition. In any event, Furniture City's petition raises serious public interest questions which warrant consideration of the petition on its merits. See *The Edgefield-Saluda Radio Co. (WJES)*, 5 FCC 2d 148, 8 RR 2d 611 (1966).

[18] See para. 1, *supra*.

[19] Compare *WTAR Radio–TV Corporation (WTAR–TV)*, — FCC 2d —, 24 RR 2d 463 (1972), where the Board added a comparative Rule 1.65 issue against a renewal applicant which failed to report CATV interests in its application because the renewal application (FCC Form 323) did not specifically require reporting the interests and Commission policy requiring reporting of CATV systems in renewal applications was not clarified until after the applicant had filed its application. In contrast, the Commission's policy of requiring the reporting of anti-trust suits by renewal applicants has been clear for several years. See *Westinghouse Broadcasting Company, supra; General Electric Company, supra.*

Changed Circumstances, FCC 64–1037, 3 RR 2d 1622. The Commission's 1951 *Report on Uniform Policy*, *supra*, made it clear that an applicant's involvement in anti-trust suits is of "decisional significance." See *General Electric Company*, *supra*, and *Westinghouse Broadcasting Company*, *supra*. Therefore, we believe a Rule 1.65 issue is warranted against Southern.[20]

8. We also believe that it was incumbent upon Furniture City to report the involvement of five of its principals in the aforementioned anti-trust suits. Paragraph 10(e) of FCC Form 301 clearly asks: "Is there now pending in any court or administrative body against the applicant or any party to this application any action involving any of the matters referred to in paragraph 10 a, b, c and d above?" Even though an applicant may not believe a change in its status or subsequent events which relate to questions in the application form like paragraph 10(e) is of any decisional value to the Commission, its failure to report the information may bear adversely on the applicant's qualifications to be a Commission licensee. The decision as to whether particular circumstances are of decisional value cannot be left solely to the subjective determination of an applicant. See *Horne Industries, Inc.*, 28 FCC 2d 454, 21 RR 2d 851 (1969). See also *Reporting of Changed Circumstances*, *supra*. Moreover, paragraph 10(e) does not draw a distinction between different kinds of directors in a corporation involved in a pending anti-trust suit; consequently, such differences cannot excuse Furniture City from failing to report the suits. The Board is of the opinion, therefore, that the existing Rule 1.65 issue against Furniture City should be modified to encompass the alleged failure of Furniture City to report the involvement of five of its principals in the Wachovia Bank anti-trust suit.

Failure to Report Business Interests

9. In its petition, Southern also argues that Furniture City failed to timely report twelve (12) business interests held by seven (7) of its nineteen (19) principals. According to Southern, Furniture City reported for the first time in an amendment filed with the Administrative Law Judge on March 27, 1972,[21] the twelve business interests, some of which had been held by the principals for as long as five years, even though Section II, Table II of FCC Form 301, clearly requires the new applicant to inform the Commission of the businesses its principals are presently engaged in and also to list any other business or financial interests in which its principals have had any official relationship within the last five years. Southern requests either enlarging the present Rule 1.65 issue to encompass the exploration of the allegations herein raised or adding an appropriate issue.

10. In opposition, Furniture City argues that its amendment of March 27, 1972, was filed pursuant to the Commission's redesignation

[20] We do not agree with the Broadcast Bureau that the issues should be designated comparative only as was done in *RKO*, *supra*. In *RKO* the applicant had amended his application to show the sale of stock and although it was late filed, we did not believe such an omission could reflect upon the applicant's basic qualifications. In contrast, the information Southern failed to report could be of decisional significance and could ultimately reflect upon its basic qualifications.

[21] As of the date of this opinion, the Administrative Law Judge has not accepted Furniture City's amendment.

Order, *supra*, which allowed the parties to amend their applications within 30 days of the date of the redesignation Order.[22] Furniture City insists that the redesignation Order made this a "*de novo* proceeding since the redesignation of a hearing voids all of the prior record *ab initio*." In Furniture City's view, then, each party was free to file any information provided it did not affect the comparative qualifications of the applicant. Furniture City appreciates that this information should have been filed with the Commission; however, in the applicant's opinion, the information is of "no great consequence" and was of "relative unimportance" to the stockholders involved, which is why they had not reported the interests earlier. Furthermore, no comparative advantage would have been gained by concealing this information, Furniture City argues.

11. In reply, Southern asserts that it is incumbent upon the applicant to report this information whether or not it believes the information to be of any decisional value to the Commission, citing *Horne Industries, Inc., supra.* In *Star Stations of Indiana, Inc.*, 34 FCC 2d 632, 24 RR 2d 165 (1972), Southern argues, the Board added a Rule 1.65 issue where an applicant had failed to disclose financial information with respect to five out of twelve of its stockholders. According to Southern, an issue is warranted in the instant case because "there are fourteen omissions by Furniture City involving eight of its seventeen stockholders representing 66½ percent of the ownership of Furniture City." Southern further argues that the redesignation Order does not excuse Furniture City from reporting this information because the Commission's Rule 1.65 requirements existed "before, during and after" the Commission's *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 22 FCC 2d 424, 18 RR 2d 1901 (1970), which was "declared illegal", according to Southern, in *Citizens Communications Center* v. *FCC*, 145 U.S. App. D.C. 32, 447 FCC 2d 1201, 22 RR 2d 2001 (1971), and which resulted in the redesignation of the instant applications.

12. The Board believes that the existing Rule 1.65 issue against Furniture City should be modified to encompass the applicant's failure to report all the business interests of seven of its principals.[23] The Board is constrained to modify the issue because the omissions are numerous and involve seven out of nineteen principals of Furniture City. See *Star Stations of Indiana, Inc., supra.* Furniture City's argument that the redesignation Order absolves it of any possible Rule 1.65 violations is incorrect. The rule applies to "pending" applications and an application is pending from the time it is "accepted for filing". See *Folkways Broadcasting Co., Inc.*, 26 FCC 2d 175, 20 RR 2d 528 (1970);[24] *Home Service Broadcasting Corporation*, 21 FCC 2d 575, 18 RR 2d 440 (1970). Thus, Furniture City was required to keep its

[22] The Commission's Order reads as follows: "Each applicant herein should be allowed a period of thirty days from the redesignation date of this Order in which to amend its application *as a matter of right* subject to limitation of Section 1.522(a) of the Rules."

[23] Southern, in its petition, lists the names of seven Furniture City principals and twelve business interests not previously reported; however, in Southern's reply the figure of eight principals and fourteen interests appears without any explanation for the change. The Board, therefore, will accept the number of principals involved and the omitted business interests as presented in the petition to enlarge.

[24] In *Folkways*, we stated that, "* * * Rule 1.65 applies 'from the time [the application] is accepted for filing by the Commission' * * * and not from the time of designation for hearing * * *." 26 FCC 2d at 177, 20 RR 2d at 532.

application current from the date its application was accepted by the Commission (*i.e.*, October 31, 1969). Therefore, Furniture City was grossly late in reporting these interests to the Commission. We note that in *Home Service, supra*, we stated that a "tardy amendment complies neither with the literal terms of the Rule which allows 30 days for corrective amendments—nor with the Rule's purpose, which is to facilitate the Commission's expeditious and accurate handling of its business." 22 FCC 2d at 581, 18 RR 2d at 449. Finally and perhaps most important, Furniture City's alleged failure to report the interests of its stockholders, John G. Hutchens and Jack H. Campbell, in Wachovia Bank could have decisional significance in light of the antitrust suit against the bank. (See paragraph 6, *supra.*) In view of the foregoing, the scope of the existing issue will be enlarged.[25] See *United Television Co., Inc.*, 33 FCC 2d 424, 23 RR 2d 644 (1972); *Minshall Broadcasting Co., Inc.*, 10 FCC 2d 647, 11 RR 2d 754 (1967). However, we do not agree with Southern that the facts warrant the addition of a separate misrepresentation issue. *Cf. United Television Co., Inc.*, 19 FCC 2d 1060, 17 RR 2d 476 (1969).

13. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed April 3, 1972, by Furniture City Television Company, Inc., and the petition to enlarge issues, filed April 13, 1972, by Southern Broadcasting Company, ARE GRANTED to the extent herein indicated, and ARE DENIED in all other respects; and that the issues in this proceeding ARE ENLARGED to include the following:

To determine whether Southern Broadcasting Company (WGHP–TV) has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of substantial required changes in its application and, if not, the effect of such non-compliance on the basic and/or comparative qualifications of the applicant to be a broadcast licensee.

14. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on Furniture City Television Company, Inc., and the burden of proof SHALL BE on Southern Broadcasting Company; and

15. IT IS FURTHER ORDERED, That the Rule 1.65 issue against Furniture City Television Company, Inc. added by the Review Board by Memorandum Opinion and Order (33 FCC 2d 1044, 23 RR 2d 1197, released March 22, 1972) IS MODIFIED to include the matters as indicated herein.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[25] The Board notes that many of the business interests Furniture City allegedly failed to report were held by its principals prior to the filing of its application on October 31, 1969; therefore, the inquiry will also encompass a possible violation of Rule 1.514.

109–020—72——5

F.C.C. 72-1100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS TO PARTS 21, 23, 25, 73, 74, 78, 87, 89, 91, AND 93 OF THE COMMISSION'S RULES RELATIVE TO THE PROTECTION OF TABLE MOUNTAIN, BOULDER, COLO., FROM RADIO INTERFERENCE	Docket No. 18180

REPORT AND ORDER

(Adopted December 6, 1972; Released December 11, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. On May 8, 1968, the Commission adopted a Notice of Proposed Rule Making in the above entitled proceeding which was published in the Federal Register on May 15, 1968 (33 FR 7157). The Notice was issued at the request of the U.S. Department of Commerce, for the purpose of developing a coordination procedure designed to protect the Department's Table Mountain Radio Receiving Zone in Boulder County, Colorado, from harmful interference from non-Government radio stations. Comments were to be filed on or before June 18, 1968, and reply comments were to be filed on or before June 28, 1968. These dates were subsequently extended to July 18 and July 29, 1968, respectively, in response to a request by International Electronic Development Corporation.

2. Comments were filed by: Armstrong Broadcasting Corporation; Representative Brotzman; Colorado Broadcasters Association; Comet Television Corporation; Communication Satellite Corporation (COMSAT); Denver Post, Inc.; International Electronic Development Corporation (IEDC); Karlo Broadcasting Ltd.; KCSU-FM, Colorado State University; KLMO, KLMO-FM; Lakewood Broadcasting Service, Inc. (Lakewood); Mullins Broadcasting Company; Russel Shaffer; WGN of Colorado, Inc. Reply Comments were filed by: Denver Post, Inc., and Environmental Science Services Administration, now National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce.

3. A number of the Broadcasters expressed the view that sufficient need had not been shown by the Department of Commerce, Boulder Laboratories, for protection of the Table Mountain Radio Receiving Zone, and several parties suggested that the Table Mountain complex should be relocated to a less populated area which could be protected without restricting the use of radio in the densely populated Denver-Boulder area. These points were addressed in the Commission's Notice wherein it was stated that the Commission is persuaded that some of the activities at Table Mountain are of such a nature that special effort should be made to protect them from harmful interference. Also, in

the Notice the Commission outlined the kind of work being done at Table Mountain [1] and the steps already taken to minimize interference at the site. Approximately ten million dollars of public money has gone into the development of the Table Mountain experimental site, and to relocate to a more remote area would incur tremendous additional and, we believe, unnecessary expense. Also, we believe such a move would seriously disrupt the activities of the Laboratories. The terrain at the site provides considerable natural shielding and the ambient noise level is relatively low despite the large and growing population of radio transmitters in the Boulder area. It is apparent, however, that the usefulness of the site for sensitive receiving experiments will be degraded in the future unless reasonable care is taken to coordinate new transmitting facilities. This is not to say that new stations will be prohibited or severely restricted, but rather that new users should recognize the need to minimize unnecessary radiation in the direction of Table Mountain.

4. COMSAT, Lakewood Broadcast Service, Inc., Russel Shaffer and IEDC question the measurement methods and criteria to be used for determining potential interference to the Table Mountain facility. It was suggested that field strength values, stated in mV/m would be ambiguous and could prevent a given station from making a complete evaluation of its effect on the Table Mountain Site. COMSAT proposes that the ambiguity be corrected by stating a reference bandwidth for each of the field strength values or by substituting power flux density levels for field strength values. COMSAT also feels that the methods for stating ERP values is "incomplete and therefore susceptible of an unduly restrictive interpretation." It feels that interpretation could be clarified by "1) further defining the power as 'ERP in the horizontal plane in the azimuth direction of the Table Mountain site from the proposed station' and 2) either characterizing the ERP as a power density in watts per bandwidth unit, or specifying that the stated ERP value applies on a per emission basis." Lakewood expresses specific concern about the manner in which measurements are to be made in determining signal strength. It suggests that the "current practice recognized by the FCC for the taking of measurements in various portions of the spectrum be specified." In areas in which the Commission has not designated specific measurement procedures, Lakewood recommends that the "procedures commonly employed by practitioners in the field be employed."

5. After further study and consultation with the Department of Commerce authorities, the Commission has decided to modify the proposed coordination criteria to conform to certain of the requests made in the comments. Specifically, we have expanded the criteria table to incorporate corresponding power flux density figures for each field

[1] The Table Mountain facility is used by the National Bureau of Standards, the Environmental Research Laboratories, and the Institute of Telecommunications Sciences (ITS). ITS provides the primary research and analysis work for the Department of Commerce in support of the Office of Telecommunications Policy as directed by Executive Order 11556. Table Mountain also serves as the major receiving site for Commerce propagation studies on behalf of the Department of Defense and many other Federal Agencies. Uses of the facility are highly diverse in nature and duration, ranging from participation in the Platteville vertical ionospheric modification program to studies of the effects of weather on propagation and wave distortion, model antenna measurements, and radio astronomy.

strength figure. Also, we have accepted COMSAT's suggestion to clarify the criteria for measurement of ERP, i.e., that it be measured in the primary radiating plane of polarization in the direction of Table Mountain Radio Receiving Zone. Also, the Department of Commerce, Boulder Laboratories, have agreed with the suggestion that techniques used to measure signal strengths on Table Mountain be the same as those employed by practitioners in the respective radio services.

6. Much concern was expressed in the comments about the possible harmful effects of the proposals on the growth of broadcasting in the Denver-Boulder area. Questions were also raised concerning potential impact on presently authorized stations. The Boulder-Denver area is presently served by five VHF television stations. The TV stations represent the three major networks, an independent commercial outlet and an educational broadcasting station. There are 27 AM and FM Broadcasting stations serving the Denver-Boulder area. As stated in the Notice, presently authorized stations, broadcasting or otherwise, will not be required to reduce their signal levels at Table Mountain. The coordination procedure is designed to reduce the chance of harmful interference to the Table Mountain site from future assignments. There would be no impact on existing assignments except that coordination should be effected in the event of a modification of an existing assignment which would significantly increase its signal strength at Table Mountain.

7. It is emphasized that the distance/power criteria set forth in the appendix are intended only as a guideline for use by applicants in determining whether a proposed operation should be coordinated. If an applicant has reliable data showing that his proposed operation will not exceed the field strength/power flux density figures contained in the appendix, coordination would not be necessary. Also, none of the provisions of the coordination procedure apply to mobile stations. Close examination by the Department of Commerce, Boulder Laboratories, of an individual application may reveal that there is little or no likelihood of interference to the Table Mountain facility, and no modifications would be requested. If, on the other hand, a problem is indicated, the Department of Commerce, Boulder Laboratories, have stated that it will make every reasonable effort to work with the applicant to reach a solution satisfactory to both parties. It is expected that satisfactory coordination can be achieved in most instances prior to filing an application with the Commission. However, the Commission will assist, if necessary, in resolving difficult problems.

8. Therefore appropriate Rule Parts are being amended herein to include a cautionary statement, drawing the attention of prospective applicants to the need for consultation with the Department of Commerce authorities in advance of making application for facilities which may result in harmful interference at the Table Mountain site. As stated in the Notice, the Commission will not screen applications to determine whether the recommended consultation has taken place. However, if an application is filed with the Commission after the effective date of the instant rule change without prior consultation with the Department of Commerce authorities which results in the instal-

lation of radio facilities which in fact deliver a signal at the reference point in excess of the field strength specified herein, the Commission may find it in the public interest to institute proceedings looking toward a requirement that the power level of the offending station be adjusted to a point where a specified field strength is not exceeded.

9. The Commission will make available to the Department of Commerce, copies of all public notices relating to applications accepted for filing in parts 21, 23, 25, 73, 74, 78, 87, 89, 91 and 93, noting that such notices do not relate to many applications for stations in the last four Parts named. The Department will be expected to screen such notices and notify the Commission, within 30 days of the date of such notice of its views in those instances where there appears to be a potential interference problem. The Commission will take such views into account in dealing with those applications in question, deciding each case on its merits in the public interest.

10. The Commission recognizes the need for appropriate interference protection for Table Mountain Radio Receiving Zone. The Commission believes that the public interest, convenience and necessity will be served by adopting the proposed coordination criteria with the minor modifications discussed above. Authority for these amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

11. Accordingly, IT IS ORDERED, That effective January 19, 1973, Parts 21, 23, 25, 73, 74, 78, 87, 89, 91, and 93 of the Commission's Rules and Regulations are amended as set forth in the Appendix.

12. IT IS FURTHER ORDERED, That the proceedings in Docket No. 18180 are hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

In Chapter I of Title 47 of the Code of Federal Regulations, § 21.15(r), 23.20(d), 25.203(d), 73.18(c), 73.215(c), 73.515(c), 73.623(c), 73.712(c), 74.12(c), 78.21(c), 87.31(f), 89.15(e), 91.8(m), and 93.9(c) are added to read identically as set forth in § 21.15 below:

§ 21.15 ***Content of applications.***

* * * * * * *

(r) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado: Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the Research Laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that field strengths at 40° 07′ 50″ N latitude, 105° 14′ 40″ W longitude, resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dBW/m^2) in authorized bandwidth of service
Below 540 kHz	10	−65.8
540-1600 kHz	20	−59.8
1.6-470 MHz	10	[2] −65.8
470-890 MHz	30	[2] −56.2
Above 890 MHz	1	[2] −85.8

[1] Equivalent values of power flux density are calculated assuming a free-space characteristic impedance of $376.7=120\pi$ ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate Parts of the FCC Rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, NOAA/OT/NBS, Time and Frequency Division, Boulder Laboratories, Boulder, Colorado 80302; telephone 303—499–3542, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the reference point in excess of the field strength specified herein.

F.C.C. 72-1017

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of TURNPIKE BROADCASTING CORP. (ASSIGNOR) and KMOD BROADCASTING CORP. (ASSIGNEE) For Assignment of License of KMOD (FM), Tulsa, Okla.	Docket No. 19631 File No. BALH-1653 BASCA-494

MEMORANDUM OPINION AND ORDER

(Adopted November 15, 1972; Released November 21, 1972)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING AND ISSUING A STATEMENT; COMMISSIONER REID ABSENT.

1. The Commission has before it the above captioned application for assignment of license of KMOD(FM), Tulsa, Oklahoma, a petition to deny filed by KFMJ, Inc., licensee of KRAV-FM, Tulsa, Oklahoma, and reply pleadings.

2. The petition to deny alleges that KMOD(FM), which has been off the air since July 15, 1971, has produced spurious emissions over a long period of time which the licensee has been unable to control and that those radiations have caused long standing interference to petitioner's station.[1] The petitioner also questions the assignee's financial qualifications to acquire and operate KMOD(FM) and eliminate the spurious emission problem. The assignee has made proposals to eliminate the spurious emission problem and has submitted amendments to its financial showing. These amendments have resolved the questions raised in the Petition to Deny and it will therefore be denied However, other serious questions raised by the assignment application require that it be designated for hearing. All of these matters are discussed below.

3. The assignee has stated with regard to the spurious emission problem that it believes that it can bring the existing transmitter into compliance with FCC rules and would submit to the Commission a proof of performance showing that it was in compliance prior to commencing operations. The assignee also submitted a contract with a consulting engineer to make an equipment proof of performance and make weekly inspections and adjustments of the transmitter. The assignee further stated that if it was not possible to use the existing transmitter, it would install a new transmitter, and it submitted a letter from Gates Radio Company quoting a price and terms for a new transmit-

[1] KMOD(FM)'s June 1, 1971 renewal application is in a deferred status. KFMJ Inc. has also filed a petition to deny the renewal application. The petition is unopposed and raises the spurious emission problem and questions the licensee's financial ability to remedy the situation.

ter and generator. In view of these representations, a grant of the assignment application will be conditioned on submission of a proof of performance prior to commencement of operations. This will protect the Petitioner from interference to its station in the future without need for a hearing on this question.

4. Regarding the assignee's final qualifications, a tabulation of its First Year Needs and available liquid resources is set forth below:

First year needs:	
Purchase price in full at closing	$82,750
Grant fee	1,655
6 months' interest on $100,000 bank loan from Bank of Minneapolis, on which interest only at 10 percent is payable for the first 6 months. Thereafter there will be equal monthly payments of principal and interest for 5 years	5,000
9 months' payments of principal and interest on the bank loan. Since the station may be off the air for 3 months after closing, 15 months may elapse before the assignee has operated the station for a year	19,750
Assignee's estimate of operating expenses	115,000
First year costs of replacing present transmitter and generator with Gates equipment	11,395
	235,550
Resources:	
Escrow deposit	10,000
Available liquid assets of Herbert Gross, assignee's 100 percent owner	12,200
Loan from Bank of Minneapolis. Interest only at 10 percent is payable for the first 6 months. Thereafter, there will be equal monthly payments of principal and interest for 5 years	100,000
Mortgage loan to be given by Bank of Minneapolis to Herbert Gross on his house	30,000
Loan from Gross' parents to be repaid when he is able. They have offered to loan $85,000 but have only shown that they have available $82,925	82,925
Loan from Darryl Hensley. He offered to loan $5,000, but has only shown that he has $3,000 available. No interest or principal need be paid until KMOD(FM) is completely solvent	3,000
Loan from Wayne Gensmer, which he is qualified to make. No payments of interest or principal are due until the Bank of Minneapolis loan is retired	35,000
	273,125

In view of the above, we conclude that the assignee is financially qualified.

5. The assignee, KMOD Broadcasting Corporation, is owned 100% by Herbert Gross. His other broadcast interests include a one third ownership interest in Titanic Corporation, licensee of WGGR(FM), Duluth, Minnesota, Titanic acquired WGGR(FM) by assignment granted March 11, 1970, at which time Gross was also president and director of licensee.[2] By letter to the Commission dated October 13, 1970, signed by Gross, WGGR advised that it was eliminating all "Public Affairs" and "Other" non-entertainment programming from the programming proposal submitted with the assignment application,[3] based on the representations that the listening public desired

[2] Gross is also 100% owner of KFLD–FM, Litchfield, Minnesota.

[3] In an earlier letter, dated September 9, 1970, WGGR's program director advised the Commission that its proposed "Other" non-entertainment programming was being eliminated because clients and listeners had requested that the music format not be interrupted.

a "pure music format" and that maintaining the original proposal would be "economic suicide." On December 20, 1970, the staff directed a letter to the licensee which: (1) recited the background of the programming representations by WGGR; (2) noted that no new survey had been submitted which would reflect a change in the needs of the area commensurate with the change in the programming proposal; (3) advised that a serious question was presented as to whether WGGR had made its original programming proposals merely to obtain expeditious approval of its application by the Commission, and (4) requested WGGR to explain the public interest considerations which caused it to decide to eliminate all public affairs and other non-entertainment programming. WGGR's response, dated January 9, 1972, claimed that "talk" programming was incompatible with the "unique" stereo music format. It also advised that the reason public affairs and other non-entertainment programming were not broadcast was because their listeners preferred the music format and WGGR's actual experience in the market had given it a more realistic idea of the needs and interests of Duluth than it had when the original proposal was made. This response incorporated the station's programming proposal contained in its renewal application which was filed on January 4, 1971 (BRH–1822) and contained no provision for "Public Affairs" or "Other" non-entertainment programming.

6. On July 27, 1971 a pre-hearing letter was sent to WGGR. It recited the above-background regarding WGGR's failure to broadcast programs as promised and asked WGGR: (1) whether any public affairs and other non-entertainment programming had been broadcast from the time the station went on the air until the Commission was advised they were eliminated from the original proposal; (2) to state in detail how it proposed to meet the needs and interests of its community with only public service announcements; and (3) whether a new survey had been conducted after the station went on the air upon which it based the change in its proposed programming. In an amendment dated August 16, 1972, signed by Gross, the licensee advised that: (1) it had not broadcast any "Public Affairs" or "Other" non-entertainment programming from the time the station commenced operation, although denying any intention not to do so;[4] (2) no new survey had been conducted, but instead letters from listeners and rating service reports were relied upon; and (3) that the station was actively involved with community groups such as Planned Parenthood, rather than just playing PSA's. The amendment also provided for 1% "Public Affairs" and 2% "Other" non-entertainment programming to be broadcast after midnight and before 7:30 a.m. A later amendment, dated November 12, 1971, advised that Gross had been removed as president of Titanic, that public affairs programming would be broadcast at more normal listening hours; manifested a recognition that the licensee had been derelict in the past; and affirmatively advised that the station would adhere to its programming proposals. On the basis of these later representations, the license of WGGR was renewed on March 23, 1972.

7. In summary, Titanic, the licensee of WGGR, through Gross, its president, made affirmative representations to the Commission regard-

[4] Correspondence submitted by the licensee did not reflect any attempt on the part of the station to develop locally produced public affairs programming.

ing the amount and kind of "Public Affairs" and "Other" non-entertainment programming it would broadcast. Relying on these representations, the Commission granted the assignment of WGGR to Titanic. Titanic, through Gross, the officer responsible for the day-to-day operation of WGGR, failed to either implement any part of the proposal or to satisfactorily explain why it had not done so. It was only after Gross had been removed as president and had been relieved of the day-to-day responsibility for the operation of the station and affirmative representations were made with regard to the future operation of WGGR, that we were able to make the statutory finding that the public interest would be served by a grant of WGGR's license renewal application.

8. The matters discussed *supra* would be sufficient, standing alone, to require a hearing to determine whether the public interest would be served by permitting Mr. Gross to acquire an additional facility. *Dupage County Broadcasters*, 21 FCC 2d 395 (1970). However, the subject assignment application and responses by Mr. Gross to staff inquiries subsequent to its filing raise equally grave questions.

9. The subject assignment application was filed prior to our grant of the license renewal of station WGGR. The application, signed by Gross, while setting forth his interest in WGGR, affirmatively denied that another application was pending before the Commission. In light of the personal involvement of Mr. Gross in the operation of WGGR and questions regarding his conduct at the station which had been raised with respect to the then pending WGGR renewal application, a substantial question is raised whether this representation by Mr. Gross was intended to mislead the Commission.[5]

10. Further, in the letter dated October 2, 1972, filed in connection with the subject assignment application, Mr. Gross again commented on his role in WGGR's operation. In contrast to his earlier responses indicating complete approval of the manner in which WGGR had been operated, Mr. Gross claimed that the failure to broadcast the public affairs programs on WGGR had been without his knowledge and contrary to his express instructions and blamed the program director Jack Christensen for these failures. This apparent conflict in statements by Mr. Gross also cannot be resolved without hearing since they all involve material representations to this Commission. In this regard we also note that while Mr. Gross now claims he was particularly upset with Mr. Christensen's failure to follow instructions in September 1970, in the WGGR renewal application dated December 16, 1970 Mr. Gross advised the Commission that this same employee continued to be responsible for the programming and day-to-day operation of the station.

11. Except as indicated, the assignee is qualified to acquire station KMOD as proposed. However, because of the above-discussed questions regarding the conduct of Mr. Gross with respect to the acquisition and operation of WGGR, Duluth, Minnesota, the Commission cannot make the statutory finding that a grant of this application would serve the public interest, convenience and necessity. The Commission is of

[5] In an October 2, 1972 letter, Gross claimed this was an inadvertence.

the opinion that the application must be designated for hearing on the issues set forth below.

Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the application IS DESIGNATED FOR HEARING at a time and location in Washington, D.C., to be specified in a subsequent order upon the following issues:

1. To determine all the facts and circumstances surrounding:
   (a) the filing of application BALH-1205 for the assignment of license of Station WWJC-FM (now WGGR) signed by Herbert Gross, with particular regard to representations made regarding "Public Affairs" and "All Other" non-entertainment programming to be broadcast to meet the needs of the licensee's community;
   (b) the failure of WGGR to broadcast such programs as promised and whether mispresentations were made to the commission by Gross and other station personnel with respect thereto; and
   (c) the failure of Gross to advise the Commission in the subject assignment application of the pending WGGR renewal application.
2. To determine, in light of the evidence adduced pursuant to issue 1, whether Herbert Gross has the requisite qualifications to acquire an additional broadcast facility.
3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether a grant of the subject application would serve the public interest, convenience and necessity.

IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the applicant, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

IT IS FURTHER ORDERED, That the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing, within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

IT IS FURTHER ORDERED, That the Petition to Deny filed by KFMJ, Inc. IS DENIED.

IT IS FURTHER ORDERED, That, if it is determined after hearing that a grant of the application would serve the public interest, such grant will be made subject to the following condition:

That prior to commencement of regular operation, the assignee will submit Section II-B of FCC Form 302, including equipment performance measurements made in accordance with Section 73.254 of the Commission's Rules which satisfactorily establish that all spurious emissions and other existing technical deficiencies have been corrected.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I fully concur in the decision to set the pending assignment application for Station KMOD(FM), Tulsa, Oklahoma, for hearing. As the designation Order clearly indicates, the qualifications of Herbert

Gross, 100% owner of KMOD Broadcasting Corporation (the proposed assignee) and minority stockholder of Titanic Corporation (the licensee of Station WGGR(FM), Duluth, Minnesota), are in serious doubt because of WGGR(FM)'s earlier failure to implement programming representations made in a 1969 application for assignment of the station to Titanic. The matters noted in the designation Order do raise a substantial question as to whether the public interest would be served by permitting Gross to acquire an additional broadcast facility.

However, the very matters raised now in connection with the KMOD(FM) assignment application would have been sufficient to justify a hearing in regard to WGGR(FM)'s renewal application, which was granted by Commission letter (FCC 72-248), dated March 23, 1972. The renewal grant was then premised on the fact that the WGGR(FM) licensee was apparently aware of the seriousness of its failure to implement programming representations in the 1969 assignment application and the further fact that the licensee had taken steps to prevent a repetition of such conduct, *e.g.*, by removing Gross as president of Titanic. I dissented to the majority's action at that time and, in a separate statement, indicated that the WGGR(FM) renewal application should be set for hearing on the same issues that now concern us in regard to the assignment application for KMOD (FM). Since I originally favored an inquiry into Titanic's apparent failure to implement its prior program proposals, I concur in the action taken here.

F.C.C. 72R-352

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ROBERT COWAN WAGNER, PINEVILLE, LA.	Docket No. 19473 File No. BP-18463
SOUTHEAST ARKANSAS RADIO, INC., DERMOTT, ARK.	Docket No. 19474 File No. BP-18476
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted November 30, 1972; Released December 4, 1972)

BY THE REVIEW BOARD:

1. Before the Review Board is a petition to enlarge issues, filed April 14, 1972, by Robert Cowan Wagner (Wagner) which requests the addition of a Rule 1.65 issue, a *Suburban* issue and engineering issues against Southeast Arkansas Radio, Inc. (Southeast).[1] [2]

Rule 1.65 Issue

2. Initially, Wagner requests a Rule 1.65 issue [3] to inquire into the facts and circumstances surrounding the election of Billy Calhoun as an officer and director of Southeast. In support of its request, Wagner relies on a letter to the Commission, dated September 27, 1971, in which Mr. Calhoun stated that he had been elected a vice-president of Southeast on February 26, 1969; yet, petitioner notes, Southeast's president, Bennie Ryburn, Sr., by amendment filed November 30, 1971, informed the Commission that Mr. Calhoun was elected on October 4, 1972. Petitioner next points to that portion of Southeast's by-laws which states that the corporation shall have a single vice-president and six directors and then contends that, since those positions are already filled, either Mr. Calhoun can be neither an officer nor a director, or the by-laws were changed without appropriate notice.[4]

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[1] Also before the Review Board are the following related pleadings: (a) supplement to petition to enlarge issues, filed April 17, 1972, by Wagner; (b) opposition, filed May 18, 1972, by Southeast; (c) Broadcast Bureau's comments, filed May 18, 1972; and (d) reply, filed May 25, 1972, by Wagner. The Board will accept the supplement because it is only two days late, corrects an "inadvertent" error in attaching affidavits, and will not prejudice any party.

[2] Wagner also requests various issues with respect to the application of Patrick H. Robinson (Docket No. 19472, File No. BP-18320), which was also designated for hearing with the above applications. The Robinson application has since been dismissed by the Administrative Law Judge by Order, FCC 72M-682, released May 24, 1972, and therefore the requested issues are mooted.

[3] Rule 1.65 requires disclosure when the information furnished in an application is no longer substantially accurate and complete in all significant respects or when changes which may be of decisional significance have occurred.

[4] Petitioner also asserts that there is a "question" as to the corporate title of Charles H. Honey, one of the principals of Southeast listed in the by-laws as "Secy.-Treas., General Counsel," contending that it is not clear whether he is Secretary-Treasurer, General Counsel or Secretary General Counsel.

3. In opposition, Southeast initially notes that the letter dated September 27, 1971, in which Mr. Calhoun stated that he had been elected vice-president on February 26, 1969, was submitted as part of an amendment to the Southeast application on November 30, 1971. However, notes Southeast, in that same amendment is another letter from Mr. Calhoun, dated October 29, 1971, in which he explains the "misunderstanding" between himself and Mr. Ryburn, Sr., which resulted in Mr. Calhoun's assumption that he was an officer and director. According to Southeast, sometime prior to February 26, 1969, Mr. Ryburn approached Mr. Calhoun with an offer to "become a member of the group applying for the station"; that it was agreed that if Mr. Calhoun would "help out" in the Dermott area he could become a vice-president and director. Southeast states that Mr. Calhoun agreed and began participation in the prosecution of the application by keeping the local file and assisting in the community survey, among other things, and Mr. Calhoun's participation was discussed at a Directors' meeting held on February 26, 1969, with Mr. Ryburn later informing Mr. Calhoun of those discussions. As a result of these discussions and his active participation, Southeast contends, Mr. Calhoun assumed that he had been elected vice-president and director, although there was in fact, never a formal election. Finally, explains Southeast, it was not until Mr. Calhoun's September 27, 1971, letter that Mr. Ryburn realized that Calhoun assumed he had been elected, and to correct this "oversight" Mr. Calhoun was formally elected at a Directors' meeting of October 4, 1971. Southeast also refers the Board to the letter amendment from Mr. Calhoun, filed December 13, 1971, which further clarifies this matter. In reference to the number of vice-presidents and directors authorized by the by-laws, Southeast states that its by-laws have been amended to allow Mr. Calhoun to serve as vice-president and director without the necessity of removal of any of the present officers or directors. In support thereof Southeast attaches the minutes of the relevant corporate meetings. Finally, to clarify the status of Mr. Charles L. Honey, Southeast points to portions of those minutes which show that his title is now "Secretary/Treasurer" of the corporation.

4. The Broadcast Bureau supports the addition of a Rule 1.65 issue, urging that the issue is necessary because, if Mr. Calhoun was elected in February, 1969, as he has previously stated, then Southeast is guilty of failing to timely amend, while, if the present application accurately reflects the facts, Calhoun is guilty of misrepresentation. In reply, petitioner notes that while the corporate minutes included with Southeast's opposition show creation of an additional vice-presidency, they do not add a director's position, and contends that Mr. Calhoun's status in the corporation apparently cannot be determined without a full evidentiary inquiry.

5. The Review Board will deny the requested Rule 1.65 issue. Such an issue is not needed in the present circumstances because Southeast has promptly and voluntarily informed the Commission of the actual formal election of Billy Calhoun to the positions of vice-president and director. See the Southeast amendments, filed November 1, 1971 and December 13, 1971. A related misrepresentation issue is not needed

because the Board finds no valid reason to question Southeast's explanation of a "misunderstanding" between Mr. Ryburn and Mr. Calhoun, as detailed in their sworn statements and summarized in paragraph 3, *supra*. In this regard, the Board considers it significant that there is no showing of any motive for Southeast to conceal such facts from or mislead the Commission in this regard. *Cf. Media, Inc.*, 22 FCC 2d 486, 18 RR 2d 970 (1970); and *Auburn Publishing Company*, 34 FCC 2d 134, 24 RR 2d 29 (1972). Moreover, the additional vice-presidency and directorship has no effect on the legal, financial or other qualifications of the applicant, and therefore the Board believes no purpose would be served by further inquiry into this matter.[5] *Cf. Harvit Broadcasting Corp.*, 34 FCC 2d 586, 24 RR 2d 160 (1972).

Suburban Issue

6. Wagner also argues that Southeast has failed to show compliance with several of the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*.[6] Initially, petitioner notes that, although Southeast's 0.5 mv/m contour covers a "significant portion" of northern Louisiana (including the city of Monroe (population 56,374)), no persons in that State were interviewed as to either local or statewide problems. Wagner contends next that a review of Southeast's application indicates that "principals or management-level employees" were not used to conduct the survey of community leaders as required by *Primer* (Q. & A. 11(a)), and it appears that no distinction was ever drawn between the community leaders' survey and the general public survey. In this regard, Wagner also argues that the method used by Southeast to insure a "random sampling" of the general public is not stated and therefore the validity of that survey is in question.[7] Finally, petitioner attacks the substance of Southeast's demographic survey, charging that it represents nothing more than a recitation of population and sales statistics along with "canned Chamber of Commerce-type releases" and does not represent a true effort to determine the various significant groups in the area as envisioned by the *Primer*.

7. In opposition, Southeast initially argues that many of the deficiences alleged by Wagner were pointed out by the Commission by letter, dated September 13, 1971, and in response thereto Southeast submitted its November 30, 1971 amendment which contains various surveys and other information rectifying those potential deficiencies. Thus, Southeast argues, Wagner has failed to allege any new facts which substantially question its survey. In reference to coverage of the State of Louisiana, Southeast notes that Monroe is over 75 miles from

[5] The Board is aware of the fact that, while the by-laws were amended to create an additional vice-presidency, no such amendment relating to a directorship for Mr. Calhoun was cited. However, the Board notes that the minutes of a June 26, 1972 Directors' meeting, as contained in the Southeast application, indicate that an appropriate directorship was established. Also, the minutes supplied by Southeast adequately indicate Mr. Honey's corporate title.

[6] 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[7] Wagner also argues that certain of the interview sheets attached to Southeast's application raise a question of Southeast's "candor," in that, although the sheets are signed by separate parties, they "contain printing in the identical same hand."

Dermott,[8] and contends that, as permitted by the *Primer*, Southeast has chosen to serve a six-county area in southeast Arkansas and does not propose to serve the State of Louisiana. As for the challenge to its demographic survey Southeast urges that the information relied upon is precisely the type specified in the *Primer*. Finally, Southeast defends its survey of the general public with the assertion that the interviews were conducted by a "man-on-the-street" method, thereby insuring equal numbers of males and females, as well as adequate control over such factors as age and race.

8. The Broadcast Bureau supports addition of the requested issue, concluding that its review of Southeast's application demonstrates a failure to make any contacts in significant portions of its service area, a failure to contact representative community leaders and a failure to indicate by what method a valid cross-sampling of the general public was taken. In reply, Wagner argues that the "deficiencies" in Southeast's survey are compounded by Southeast's "admission" that it will not attempt to provide service to Louisiana. Wagner contends that an applicant cannot be allowed to "pick and choose" the outlying areas and communities it will serve or else the Commission's frequency allocation scheme is in danger. Wagner also attacks the efficacy of a "man-on-the-street" type interview, arguing that such a method cannot provide the required random sampling. Finally, Wagner reasserts its contention that the demographic data supplied by Southeast does not meet the *Primer* requirements in that, for example, Southeast has set forth no groups in the area and therefore it must follow that any survey of community leaders will be inaccurate.

9. Although Southeast has by amendment and in its responsive pleading adequately answered several of the questions raised by the petitioner, *i.e.*, whether Southeast failed to survey a significant portion of its proposed service area,[9] whether it utilized principals or management-level employees to conduct the survey, and whether a distinction was drawn between surveys of the general public and community leaders, the Board nevertheless is of the view that the addition of a *Suburban* issue is warranted. The primary reason for our determination is the apparent failure of Southeast's demographic survey to provide an adequate showing of the composition of the community as required by the *Primer*, (Q. & A. 10). The purpose of such a showing is, of course, to inform the applicant and the Commission as to what groups comprise the community and yet, as noted by petitioner, nowhere in Southeast's application is there any indication of what groups are present or their location. Just as important, Southeast "has not shown that it prepared an adequate summary of the applicable data or that its determination is based on anything more than generalities and estimates." In sum, Southeast "has simply supplied no concrete information on which a determination of the composition of the community can be based," *WPIX, Inc.*, 34 FCC 2d 419, 421, 24 RR 2d 59, 62 (1972), and addition of the issue is neces-

[8] *Primer* (Q. & A. 6) states that "no major city more than 75 miles from the transmitter site need be included in the applicant's ascertainment, even if the station's service contours exceed that distance."

[9] In this regard, we note that the only major community which petitioner specifically alleges is located in the unsurveyed area is Monroe, Louisiana, which is located more than 75 miles from Dermott.

sitated. Moreover, the Board is concerned with the "random sample" survey of the general public. As noted in the *Primer*, (Q. & A. 13(b)), random sample consultations with the general public "should be designed to further ascertain community problems which may not have been revealed by consultations with community leaders." In view of the apparent failure of Southeast's demographic survey to adequately locate the various groups and, in turn, the leaders thereof, the possible failure of the "man-on-the-street" survey to provide a truly random sampling of the general public assumes even greater significance.[10]

Technical Issues

10. Wagner's final requested issues seek a determination of whether the signal placed over Dermott, Southeast's proposed city of license "represents good engineering practice in the light of the normally expected variations in signal strength occurring in the null areas of its directional antenna pattern," and whether the antenna site proposed by Southeast is the best site to provide the maximum signal strength over Dermott.[11] Petitioner relies on the case of *Edina Corp.*, 27 FR 7692, published August 3, 1962, where a similar issue was added and also submits the affidavit of its engineer in which he avers that the Southeast proposal does not represent "good engineering practice" because of a diminution of signal strength over Dermott which might fail to provide the required coverage.

11. The Review Board will deny the requested issues. As pointed out in the responsive pleadings of both the Broadcast Bureau and Southeast, the allegations in support of these issues are conclusory in nature and are not supported by concrete charges of technical deficiencies sufficient to support the action requested. Rule 1.229(c). In its responsive pleading, Southeast has adequately shown that its proposal complies with the coverage provisions of Commission Rules 73.188(b)(1) and (2), which distinguishes the instant proposal from that in *Edina*, *supra*, where the Commission had previously specified such a coverage issue. Finally, in reference to Southeast's antenna site, the Board notes that Attachment 1 to Wagner's petition to enlarge, which depicts the interference situation between Southeast and WKRA, establishes that any site selected further east from that presently proposed would result in increased interference from Station WKRA.

12. Accordingly, IT IS ORDERED, That the supplement to petition to enlarge issues, filed April 17, 1972, by Robert Cowan Wagner, IS ACCEPTED; and that the petition to enlarge issues, filed April 14, 1972, by Robert Cowan Wagner, IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

13. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED to include the following issue:

[10] Although the petitioner, in a footnote, contends that the handwriting on various sheets submitted by different Southeast interviewers is similar, and suggests that this raises questions of candor, petitioner concedes that it is speculating, and its unsupported allegations in this regard are clearly insufficient to warrant a separate candor issue.

[11] In this regard, Wagner argues that Southeast should make a showing as to why its antenna site could not be moved further east, thereby stabilizing its signal over Dermott.

To determine the efforts made by Southeast Arkansas Radio, Inc. to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests; and

14. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof under this issue SHALL BE upon Southeast Arkansas Radio, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*